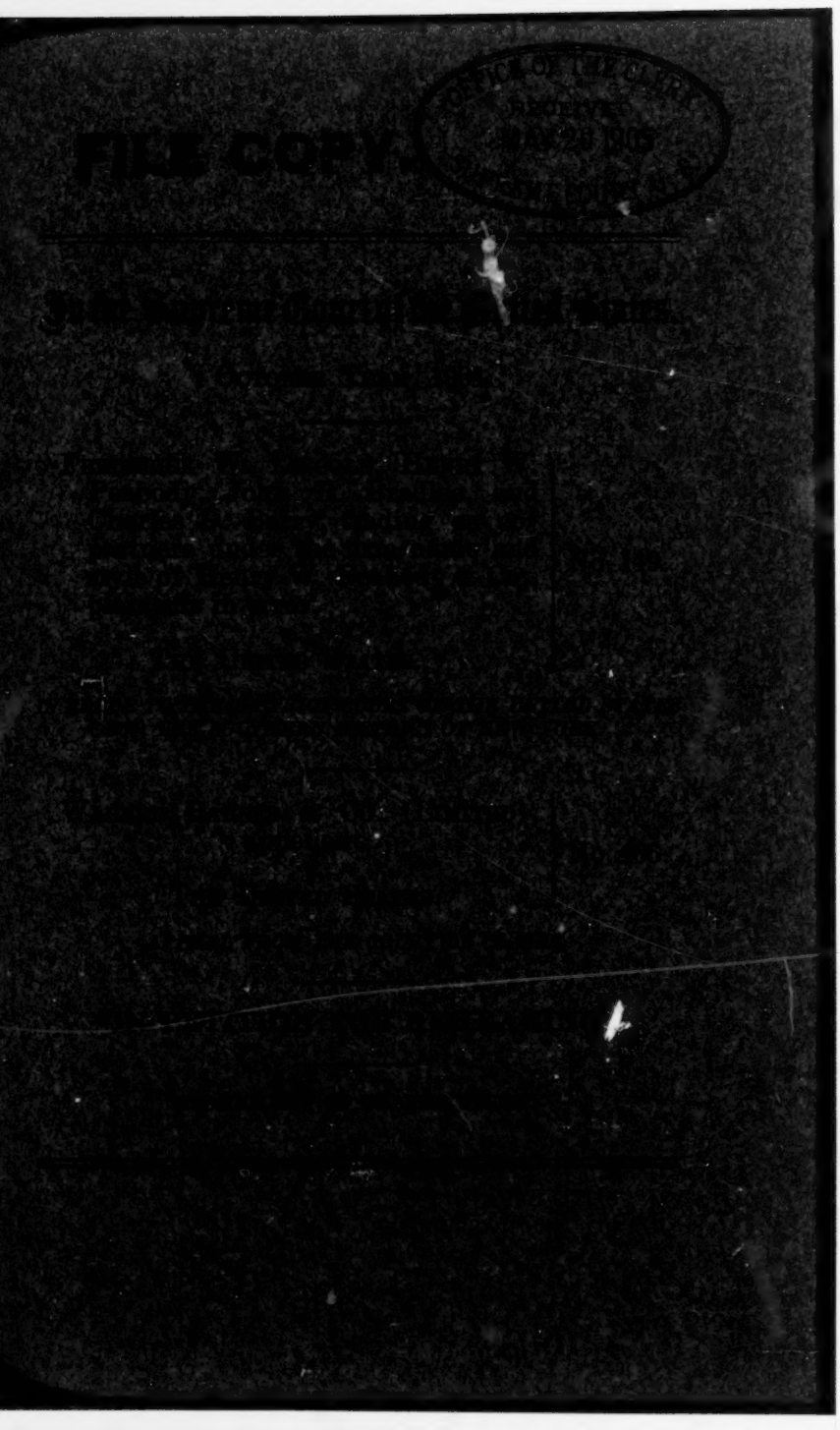

In the Supreme Court of the United States.

OCTOBER TERM, 1904.

FREDERICK W. LINCOLN, HENRY W. Peabody, JOHN R. BRADLEE, and CHARLES D. BARRY, trading as co-partners under the firm name and style of HENRY W. PEABODY & CO., plaintiffs in error,
v.
THE UNITED STATES. } No. 149.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

WARNER, BARNES & CO. (LIMITED), appellant,
v.
THE UNITED STATES. } No. 466.

APPEAL FROM THE COURT OF CLAIMS.

ON PETITION FOR REHEARING.

STATEMENT OF CLAIMS FILED.

We submit to the court the following statement of claims filed, which would come under the decision herein, for refund of duties. The clerk of the Court of Claims states that this list is complete

and accurate to date. It is evident that additional claims are being presented from day to day. The list is arranged to show the aggregate of claims up to July 1, 1902, and the aggregate of claims since that date and up to the present time.

CLAIMS FILED UP TO JULY 1, 1902.

22757. Jan.	18, 1902.	Warner, Barnes & Co	$162, 253. 29
22758. Jan.	20, 1902.	Warner, Barnes & Co	326, 386. 62
22760. Jan.	25, 1902.	Smith, Bell & Co	1, 216, 000. 00
22761. Jan.	25, 1902.	Smith, Bell & Co	4, 000. 00
22762. Jan.	25, 1902.	Smith, Bell & Co	445, 000. 00
22763. Jan.	25, 1902.	Smith, Bell & Co	244, 000. 00
22808. Feb.	27, 1902.	Guiterrez Hermanos	138, 939. 97
22809. Feb.	27, 1902.	Juan B. Gomez	19, 753. 75
22810. Feb.	27, 1902.	Juan B. Gomez	3, 127. 09
22812. Mar.	3, 1902.	Warner, Barnes & Co	700. 00
22813. Mar.	3, 1902.	Warner, Barnes & Co	2, 104. 00
22816. Mar.	5, 1902.	Perez & Co	1, 400. 00
22817. Mar.	5, 1902.	Perez & Co	16, 000. 00
22823. Mar.	13, 1902.	Ker & Co	180, 000. 00
22824. Mar.	13, 1902.	Ker & Co	131, 000. 00
22825. Mar.	13, 1902.	Ker & Co	4, 300. 00
22826. Mar.	13, 1902.	Ker & Co	49, 000. 00
22846. Apr.	3, 1902.	Walter F. Stevenson et al	24, 084. 37
22860. May	3, 1902.	Warner, Barnes & Co	300, 000. 00
22879. May	19, 1902.	Jacob Hankrom	72, 568. 43
22901. June	21, 1902.	Pacific Oriental Trading Co	4, 280. 00
22902. June	21, 1902.	Pacific Oriental Trading Co	1, 587. 39
22903. June	21, 1902.	Pacific Oriental Trading Co	5, 632. 33
22904. June	21, 1902.	Pacific Oriental Trading Co	104, 374. 53
22905. June	21, 1902.	Pacific Oriental Trading Co	33, 148. 86
22907. June	25, 1902.	Robinson & Co	8, 000. 00
22908. June	25, 1902.	Compañía General de Tabacos	25, 984. 64
		Total	$3, 523, 618. 07

CLAIMS FILED ON AND SINCE JULY 1, 1902.

22913. July	1, 1902.	McLeod & Co	$360, 000. 00
22914. July	1, 1902.	C. Heinszln & Co	125, 000. 00
23117. Nov.	28, 1902.	Pacific Oriental Trading Co	125, 761. 18
24313. Oct.	30, 1903.	The American Commercial Co	3, 011. 37
24314. Oct.	30, 1903.	The American Commercial Co	267, 556. 21
24315. Oct.	30, 1903.	The American Commercial Co	3, 591. 52
24316. Oct.	30, 1902.	The American Commercial Co	550, 875. 34
			$1, 435, 795. 62

			Forward	$1,435,795.62
27736.	Apr.	11, 1905.	Stahl & Rumcker	6,500.00
27737.	Apr.	11, 1905.	Lenora T. Aylade Xobel	5,500.00
27738.	Apr.	11, 1905.	Fabricade Tabacos la Insular	400.00
27739.	Apr.	11, 1905.	Alfredo Chicote Beltran or Alfredo Chicote	5,500.00
27757.	Apr.	12, 1905.	The Standard Oil Co. of New York.	173,221.44
27772.	Apr.	17, 1905.	John M. Switzer	20,000.00
27773.	Apr.	17, 1905.	Calder & Co	4,000.00
27774.	Apr.	17, 1905.	Lambert & Presty	2,600.00
27775.	Apr.	17, 1905.	Manila Navigation Co	3,100.00
27776.	Apr.	17, 1905.	Philippine Lumber and Development Co	1,400.00
27777.	Apr.	17, 1905.	J. Parsons	3,000.00
27778.	Apr.	17, 1905.	Teodore de los Reyes	1,900.00
27779.	Apr.	17, 1905.	Successors of R. Bren	375.00
25425.	June	15, 1904.	Cosme Blanco Herrera et al	35,000.00
26013.	Aug.	18, 1904.	Kuenzle & Strieff	140,000.00
26014.	Aug.	18, 1904.	Kuenzle & Strieff	175,000.00
26015.	Aug.	18, 1904.	Holliday, Wise & Co	117,000.00
27176.	Dec.	22, 1904.	Edward A. Keller Sturche	79,790.89
27177.	Dec.	22, 1904.	Edward A. Keller Sturche	2,226.27
27306.	Jan.	16, 1905.	American Sugar Refining Company	113,946.90
27379.	Feb.	4, 1905.	Use of Carmon & Co	6,000.00
27381.	Feb.	4, 1905.	Augustine Medel	31,425.00
27591.	Apr.	1, 1905.	Campanía General de Tabacos de Filipinas	25,936.55
27592.	Apr.	1, 1905.	E. C. McCullough & Co	72,950.00
27593.	Apr.	1, 1905.	Ynchansti Companie	9,740.00
27594.	Apr.	1, 1905.	American Hardware and Plumbing Co	14,610.00
27595.	Apr.	1, 1905.	Newhall & Fenner	5,357.00
27596.	Apr.	1, 1905.	Findlay & Co	19,967.00
27597.	Apr.	1, 1905.	Macondray & Co	40,395.00
27598.	Apr.	1, 1905.	Sackerman & Co	73,050.00
27599.	Apr.	1, 1905.	Lutz Moll & Co	100,000.00
27600.	Apr.	1, 1905.	Behm, Myer & Co	200,000.00
27607.	Apr.	1, 1905.	Companie General de Tabacos de Filipinas	217,628.16
27608.	Apr.	1, 1905.	Sprungli & Co	3,477.86
27610.	Apr.	1, 1905.	Luchsinger & Co	5,000.00
27711.	Apr.	10, 1905.	Rita Donaldson Sim Valdez	30,000.00
27712.	Apr.	10, 1905.	Manuel T. Figueras	20,500.00
27713.	Apr.	10, 1905.	Compania Maritima	5,750.00
27727.	Apr.	10, 1905.	Conrad Struckmann et al.[a]	8,442.83
				$3,215,585.52

[a] Total of this claim is $184,723.77 Mexican currency; $176,280.94 is for duties on imports from Spain.

			Forward	$3,215,585.52
27728.	Apr.	11, 1905.	Hoskyn & Co	4,700.00
27729.	Apr.	11, 1905.	Union Farmacentica Filipinas	2,100.00
27730.	Apr.	11, 1905.	Cesar Garcia, administrator of one Gomez	150,000.00
27731.	Apr.	11, 1905.	Manuel Earnshaw & Co	3,900.00
27732.	Apr.	11, 1905.	Juan Tuason, liquidator of G. Hollman & Co	40,000.00
27733.	Apr.	11, 1905.	Meerkamp & Co	900.00
27734.	Apr.	11, 1905.	Reyes & Smith	25,000.00
27735.	Apr.	11, 1905.	Kuenzle & Streiff	3,400.00
27780.	Apr.	17, 1905.	Forbes, Munn & Co	50,000.00
27781.	Apr.	17, 1905.	Felix Ullmann	5,000.00
27782.	Apr.	17, 1905.	E. J. Smith	25,000.00
27783.	Apr.	17, 1905.	D. H. Gulick	2,500.00
27650.	Apr.	10, 1905.	Levy Brothers	5,000.00
27651.	Apr.	10, 1905.	Henry D. Wolf	5,500.00
27652.	Apr.	10, 1905.	Erlanger & Galinger	20,000.00
27653.	Apr.	10, 1905.	Heacock & Freer	5,000.00
27654.	Apr.	10, 1905.	Carlos Gsell	4,600.00
27655.	Apr.	10, 1905.	L. J. Lambert	3,000.00
27656.	Apr.	10, 1905.	Daniel Denniston	2,000.00
27657.	Apr.	10, 1905.	The B. W. Cadwallader Co	7,000.00
27658.	Apr.	10, 1905.	John Gibson	3,500.00
27659.	Apr.	10, 1905.	El Verdadero de Manila	10,000.00
27660.	Apr.	10, 1905.	The Singer Manufacturing Co	8,500.00
27661.	Apr.	10, 1905.	Mariano y Chaco	5,000.00
27662.	Apr.	10, 1905.	M. A. Clarke	15,000.00
27663.	Apr.	10, 1905.	Greilsammer Bros	1,200.00
27664.	Apr.	10, 1905.	Camille Alkan	7,500.00
27665.	Apr.	10, 1905.	Francisco Reyes	7,000.00
27666.	Apr.	10, 1905.	Froloch & Kuttner	12,000.00
27667.	Apr.	10, 1905.	J. F. Ramirez	4,100.00
27668.	Apr.	10, 1905.	Rafael Reyes	15,000.00
27669.	Apr.	10, 1905.	San Miguel Brewery	4,600.00
27670.	Apr.	10, 1905.	J. M. Tuason & Co	8,000.00
27671.	Apr.	10, 1905.	Alfredo Roensch	8,000.00
27672.	Apr.	10, 1905.	N. T. Hashim & Co	30,000.00
27673.	Apr.	10, 1905.	Pons & Co	100.00
27674.	Apr.	10, 1905.	Santos and Jaehrling	2,200.00
27675.	Apr.	10, 1905.	Blanc and Brunschwig	1,400.00
27676.	Apr.	10, 1905.	Paul Hube	2,400.00
27677.	Apr.	10, 1905.	Serre & Co	600.00
27678.	Apr.	10, 1905.	Vinda de M. Soler	1,900.00
27679.	Apr.	10, 1905.	A. G. Librant, Siegert	1,400.00
27680.	Apr.	10, 1905.	Ramon Moutes	2,100.00
27681.	Apr.	10, 1905.	Lutz & Co	1,600.00
				$3,733,285.52

			Forward	$3,733,285.52
27682.	Apr.	10, 1905.	Rita Donaldson Sim Valdez	10,000.00
27683.	Apr.	10, 1905.	La Compania Elextricista	8,200.00
27801.	Apr.	19, 1905.	W. F. Stevenson & Co	194,163.89
27820.	Apr.	24, 1905.	Angel Ortigm	30,480.00
27830.	Apr.	26, 1905.	Rueda Hermanos	1,417.00
27831.	Apr.	26, 1905.	Hubert y Guamis	1,800.00
27832.	Apr.	26, 1905.	Vinda de E. Bota	600.00
27833.	Apr.	26, 1905.	Cortijo & Co	650.00
27834.	Apr.	26, 1905.	Perez Hermanos	350.00
27835.	Apr.	26, 1905.	Luciano Cordoba	1,600.00
				$3,982,546.41

In the following cases preliminary petitions have been filed alleging indebtedness generally:

27848.	May	3, 1905.	David Sampson	$100,000.00
27849.	May	3, 1905.	Zeetvion	15,000.00
27850.	May	3, 1905.	H. Price	8,000.00
27851.	May	3, 1905.	James Norton	5,000.00
27852.	May	3, 1905.	Mariana Velasco	4,000.00
27853.	May	3, 1905.	Weingarten Brothers	3,000.00
27854.	May	3, 1905.	Tanjoco Company	3,000.00
27855.	May	3, 1905.	Woodward Company	3,000.00
27856.	May	3, 1905.	Luttrell Darley	2,000.00
27857.	May	3, 1905.	Phil Seldner	1,000.00
				$144,000.00

RECAPITULATION.

Total claims filed up to July 1, 1902	$3,523,618.07
Total claims filed on and since July 1, 1902	3,982,546.41
Petitions alleging indebtedness generally	144,000.00
Grand total	$7,650,164.48

WILLIAM H. MOODY,
Attorney-General.

HENRY M. HOYT,
Solicitor-General.

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FILE COPY

In the Supreme Court of the United States.

OCTOBER TERM, 1904.

FREDERICK W. LINCOLN ET AL., plaintiffs in error, v. THE UNITED STATES.	No. 149.
WARNER, BARNES & CO. (LIMITED), appellant, v. THE UNITED STATES.	No. 466.

ON PETITION FOR REHEARING.

CORRECTION AS TO STATEMENT OF CLAIMS FILED.

We inform the court that our statement of claims filed is erroneous in that we assumed the amounts to be in American currency, whereas many are in Mexican dollars. Furthermore, the list submitted to the court contained some claims of export duties and other items not involving the import tariff at all or imports from foreign countries. The list has now been carefully revised and corrected, and is appended hereto in accurate form. Claims on imports from *Spain* have been retained because of the provision of the treaty (Art. IV) that "the United States will, for the term of ten years from the date of the exchange of the ratifications of the present

treaty, admit Spanish ships and merchandise to the ports of the Philippine Islands on the same terms as ships and merchandise of the United States."

The information originally given us led us to think that either the claims expressed American currency on their face, or that they had been reduced to that currency before the list was transmitted to us. We have just discovered these mistakes (which were inadvertent), and hasten to apprise the court that the amount of refunds due under the decision will not be $7,650,164.48, as stated, but somewhat less than half that amount, viz, $3,485,328.74.

This total does not include the particular claim of Warner, Barnes & Co. before the court, amounting to $81,126.65, nor the Lincoln claim amounting to $713.42; and it is proper to add that the number and amount of claims, like the Lincoln claim, pending in other Federal courts than the Court of Claims, is at present unknown.

It is unnecessary to say that we had no intention or desire to exaggerate the consequences of the decision, and it is manifest that, allowing for the error made, the sum of money at stake is large enough to justify fully our previous references to the money importance of the issue.

WILLIAM H. MOODY,
Attorney-General.
HENRY M. HOYT,
Solicitor-General.

CLAIMS FILED UP TO JULY 1, 1902.

22761.	Jan. 25, 1902.	Smith, Bell & Co	$2,000.00
22808.	Feb. 27, 1902.	Guiterrez Hermanos	69,469.98
22809.	Feb. 27, 1902.	Juan B. Gomez	9,876.88
22810.	Feb. 27, 1902.	Juan B. Gomez	1,563.55
22812.	Mar. 3, 1902.	Warner, Barnes & Co	700.00
22816.	Mar. 5, 1902.	Perez & Co	700.00
22817.	Mar. 5, 1902.	Perez & Co	8,000.00
22823.	Mar. 13, 1902.	Ker & Co	90,000.00
22825.	Mar. 13, 1902.	Ker & Co	2,150.00
22879.	May 19, 1902.	Jacob H. Ankrom	72,568.43
22904.	June 21, 1902.	Pacific Oriental Trading Co	104,374.53
22905.	June 21, 1902.	Pacific Oriental Trading Co	33,148.86
22907.	June 25, 1902.	Robinson & Co	60,000.00
	Total		$454,552.23

CLAIMS FILED ON AND SINCE JULY 1, 1902.

22914.	July 1, 1902.	C. Heinszen & Co	$125,000.00
23117.	Nov. 28, 1902.	Pacific Oriental Trading Co	125,761.18
24313.	Oct. 30, 1903.	The American Commercial Co	3,011.37
24314.	Oct. 30, 1903.	The American Commercial Co	267,556.21
24315.	Oct. 30, 1903.	The American Commercial Co	3,591.52
24316.	Oct. 30, 1902.	The American Commercial Co	550,875.34
27736.	Apr. 11, 1905.	Stahl & Rumcker	6,500.00
27737.	Apr. 11, 1905.	Lenora T. Aylade Zobel	5,500.00
27738.	Apr. 11, 1905.	Fabricade Tabacos La Insular	400.00
27739.	Apr. 11, 1905.	Alfredo Chicote Beltran or Alfredo Chicote	5,500.00
27757.	Apr. 12, 1905.	The Standard Oil Co., of New York	173,221.44
27772.	Apr. 17, 1905.	John M. Switzer	20,000.00
27773.	Apr. 17, 1905.	Calder & Co	4,000.00
27774.	Apr. 17, 1905.	Lambert & Presty	2,600.00
27775.	Apr. 17, 1905.	Manila Navigation Co	3,100.00
27776.	Apr. 17, 1905.	Philippine Lumber and Development Co	1,400.00
27777.	Apr. 17, 1905.	John Parsons	3,000.00
27778.	Apr. 17, 1905.	Teodore de los Reyes	1,900.00
27779.	Apr. 17, 1905.	Successors of R. Bren	375.00
26013.	Aug. 18, 1904.	Kuenzle & Strieff	140,000.00
26014.	Aug. 18, 1904.	Kuenzle & Strieff	175,000.00
26015.	Aug. 18, 1904.	Holliday, Wise & Co	117,000.00
27176.	Dec. 22, 1904.	Edward A. Keller Sturche	79,790.89
27177.	Dec. 22, 1904.	Edward A. Keller Sturche	2,226.27
27591.	Apr. 1, 1905.	Compania General de Tabacos de Filipinas	25,936.55
27592.	Apr. 1, 1905.	E. C. McCullough & Co	72,050.00
27593.	Apr. 1, 1905.	Ynchansti Companie	9,740.00
			$1,925,035.77

			Forward	$1,925,035.77
27594.	Apr.	1, 1905.	American Hardware & Plumbing Co	14,610.00
27595.	Apr.	1, 1905.	Newhall & Fenner	5,357.00
27596.	Apr.	1, 1905.	Findlay & Co	19,967.00
27597.	Apr.	1, 1905.	Macondray & Co	40,395.00
27598.	Apr.	1, 1905.	Sackerman & Co	36,525.00
27599.	Apr.	1, 1905.	Lutz, Moll & Co	50,000.00
27600.	Apr.	1, 1905.	Behm, Myer & Co	100,000.00
27608.	Apr.	1, 1905.	Sprungli & Co	3,477.86
27712.	Apr.	10, 1905.	Manuel T. Figueras	20,500.00
27713.	Apr.	10, 1905.	Compania Maritima	5,750.00
27727.	Apr.	10, 1905.	Conrad Struckmann et al	92,361.88
27728.	Apr.	11, 1905.	Hoskyn & Co	4,700.00
27729.	Apr.	11, 1905.	Union Farmacentica Filipinas	2,100.00
27730.	Apr.	11, 1905.	Cesar Garcia, administrator of one Gomez	150,000.00
27731.	Apr.	11, 1905.	Manuel Earnshaw & Co	3,900.00
27732.	Apr.	11, 1905.	Juan Tuason, liquidator of G. Hollman & Co	40,000.00
27733.	Apr.	11, 1905.	Meerkamp & Co	900.00
27734.	Apr.	11, 1905.	Reyes & Smith	25,000.00
27735.	Apr.	11, 1905.	Kuenzle & Strieff	3,400.00
27780.	Apr.	17, 1905.	Forbes, Munn & Co	50,000.00
27781.	Apr.	17, 1905.	Felix Ullmann	5,000.00
27782.	Apr.	17, 1905.	E. J. Smith	25,000.00
27783.	Apr.	17, 1905.	D. H. Gulick	2,500.00
27650.	Apr.	10, 1905.	Levy Brothers	5,000.00
27651.	Apr.	10, 1905.	Henry D. Wolf	5,500.00
27652.	Apr.	10, 1905.	Erlanger & Galinger	20,000.00
27653.	Apr.	10, 1905.	Heacock & Freer	5,000.00
27654.	Apr.	10, 1905.	Carlos Gsell	4,600.00
27655.	Apr.	10, 1905.	L. J. Lambert	3,000.00
27656.	Apr.	10, 1905.	Daniel Denniston	2,000.00
27657.	Apr.	10, 1905.	The B. W. Cadwalader Co	7,000.00
27658.	Apr.	10, 1905.	John Gibson	3,500.00
27659.	Apr.	10, 1905.	El Verdadero de Manila	10,000.00
27660.	Apr.	10, 1905.	The Singer Manufacturing Co	8,500.00
27661.	Apr.	10, 1905.	Mariano y Chaco	5,000.00
27662.	Apr.	10, 1905.	M. A. Clarke	15,000.00
27663.	Apr.	10, 1905.	Greilsammer Bros	1,200.00
27664.	Apr.	10, 1905.	Camille Alkam	7,500.00
27665.	Apr.	10, 1905.	Francisco Reyes	7,000.00
27666.	Apr.	10, 1905.	Froloch & Kuttner	12,000.00
27667.	Apr.	10, 1905.	J. F. Ramirez	4,100.00
27668.	Apr.	10, 1905.	Rafael Reyes	15,000.00
27669.	Apr.	10, 1905.	San Miguel Brewery	4,600.00
				$2,771,979.51

		Forward	$2,771,979.51
27670.	Apr. 10, 1905.	J. M. Tuason & Co	8,000.00
27671.	Apr. 10, 1905.	Alfredo Roensch	8,000.00
27672.	Apr. 10, 1905.	N. T. Hashim & Co	30,000.00
27673.	Apr. 10, 1905.	Pons & Co	100.00
27674.	Apr. 10, 1905.	Santos & Jaehrling	2,200.00
27675.	Apr. 10, 1905.	Blanc & Brunschwig	1,400.00
27676.	Apr. 10, 1905.	Paul Hube	2,400.00
27677.	Apr. 10, 1905.	Serre & Co	600.00
27678.	Apr. 10, 1905.	Viuda de M. Soler	1,900.00
27679.	Apr. 10, 1905.	A. G. Librant, Siegert	1,400.00
27680.	Apr. 10, 1905.	Ramon Montes	2,100.00
27681.	Apr. 10, 1905.	Lutz & Co	1,600.00
27682.	Apr. 10, 1905.	Rita Donaldson Sim Valdez	10,000.00
27683.	Apr. 10, 1905.	La Compañía Electricista	8,200.00
27820.	Apr. 24, 1905.	Angel Ortigm	30,480.00
27830.	Apr. 26, 1905.	Rueda Hermanos	1,417.00
27831.	Apr. 26, 1905.	Hubert y Gu nis	1,800.00
27832.	Apr. 26, 1905.	Vinda de E. Bota	600.00
27833.	Apr. 26, 1905.	Cortijo & Co	650.00
27834.	Apr. 26, 1905.	Perez Hermanos	350.00
27835,	Apr. 26, 1905.	Luciano Cordoba	1,660.00
			$2,886,776.51

In the following cases preliminary petitions have been filed, alleging indebtedness generally:

27848.	May 3, 1905.	David Sampson	$100,000.00
27849.	May 3, 1905.	Zeetvion	15,000.00
27850.	May 3, 1905.	H. Price	8,000.00
27851.	May 3, 1905.	James Norton	5,000.00
27852.	May 3, 1905.	Mariano Velasco	4,000.00
27853.	May 3, 1905.	Weingarten Bros	3,000.00
27854.	May 3, 1905.	Tanjoco Co	3,000.00
27855.	May 3, 1905.	Woodward Co	3,000.00
27856.	May 3, 1905.	Luttrell Darley	2,000.00
27857.	May 3, 1905.	Phil Seldner	1,000.00
			$144,000.00

RECAPITULATION.

Total claims filed up to July 1, 1902	$454,552.23
Total claims filed on and since July 1, 1902	2,886,776.51
Petitions alleging indebtedness generally	144,000.00
Grand total	$3,485,328.74

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In the Supreme Court of the United States.

OCTOBER TERM, 1904.

FREDERICK W. LINCOLN, HENRY W. PEABODY, John R. Bradlee, and Charles D. Barry, trading as copartners under the firm name and style of Henry W. Peabody & Co., plaintiffs in error,
v.
THE UNITED STATES. } No. 149.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

WARNER, BARNES & CO., LIMITED, appellant,
v.
THE UNITED STATES. } No. 466.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FILED UNDER ORDER OF COURT UPON PETITION FOR REHEARING.

This brief, under the order of the court, is to be—

> Addressed solely to the two points, whether Congress ratified the collection of the sums sought to be recovered in these suits, and whether it had power to do so.

7655—05——1

This leaves in the case for present discussion only the questions of the *intention* of Congress and the *power* of Congress.

But before taking up these two points it is permissible to recapitulate the preliminary point of the *intention* of the *Executive*, in order that we may get in close touch with the subject and introduce the discussion logically.

I. THE INTENTION OF THE EXECUTIVE.

We have heretofore shown, we think, in the former briefs, that beyond doubt the Executive, understanding and believing that it had the power so to do, intended to continue and did continue by various orders and in actual administrative practice the provisional tariff after April 11, 1899, just as before. When authority and administration on the civil side were gradually transferred from military officers to the civil administration under the Letter of Instructions to the Philippine Commission of April 7, 1900, and the order appointing the president of the Commission as civil governor, there was no disturbance or change whatever in the theory of that tariff, in the Executive views of the foundation on which it rested, or in its imposition and enforcement. Manifestly, the entire scheme, so far as intention of the Executive and operation under the Executive are concerned, was a continuous, unitary, and unbroken thing from the date of the original order in July, 1898, to the final legislation by Congress in 1902. (Petition of the United States for rehearing, pp. 4–10; brief of the Attorney-Gen-

eral on petition for rehearing, pp. 2–10.) We emphasize two facts (as to the continuous intention and action of the Executive) brought out we think, in the passages last cited, viz, long after the treaty of peace was ratified by both powers, and one day before ratifications were exchanged and the treaty proclaimed; that is to say, on April 10, 1899, the President acted on the tariff, in the series of minor revisions, by incorporating an additional paragraph. Can it be supposed that the President would so act if he thought or intended that what he did would become nugatory at once? The answer to that question can only be in the negative; and it is to be added that less than a month after ratification (May 3, 1899) a further order was promulgated, which is meaningless unless construed as another logical step in the uninterrupted development of the original order of July 12, 1898. Again, the Secretary of War's telegram to the chairman of the Commission at Manila, dated June 8, 1901, shows plainly that at that stage the President was continuing to impose duties as theretofore; that further revision in details was being formally considered, and that legislation adopting the military tariff without modification in principle, proposed by the Commission (and enacted by them September 17, 1901), was authorized.

II. THE INTENTION OF CONGRESS.

Coming now to the first of the remaining points—the inaction of Congress at the outset, that is, its failure to declare and enact specifically as soon as the treaty was

ratified, must be taken, we think, to mean that Congress also supposed that the war power of the President was ample and extended to the new armed conflict. The legislature not disapproving, its silence signified assent and acquiescence. Of course, apart from formal recorded proceedings, committee action, the taking of testimony, etc., it must be conclusively presumed that Congress was fully informed at all stages and knew exactly what was taking place and being done both in the military campaigns and in civil administration. The formal and concrete action of Congress during the insurrectionary period up to the enactment of the Spooner amendment was logically confined to providing men and munitions. This was necessary for Congress to do, and this is all that was necessary for it to do consistently with the idea of its tacit assumption of the extent of the Excutive power and its tacit agreement in the propriety of the Executive acts. Plainly no unfavorable inference can be drawn from this essential "legislation of the purse," as containing in the affirmative grant a sort of negative pregnant; that is, a prohibition on the President or any dissent whatever from the civil and military programme of his Administration.

Then came the Spooner amendment in March, 1901, and whatever else may be pertinent to say about it, this much is certain—that it followed by substantial reproduction of language the precedent of the Louisiana case (act of October 31, 1803; 2 Stat., 245); that there could not well be a broader grant of power giving the President all possible authority to cover every

phase of the Philippine emergencies and necessities, and that the *general intention* of Congress at that point to approve comprehensively what the President had previously done, and to authorize him comprehensively to act thus in future, appears too plainly for any discussion.

The act of March 8, 1902, was the adoption by Congress itself, as its own tariff law for the Philippines, of the existing provisional tariff, without any change, and specifying that it applied to merchandise entering the Philippines from the United States. This statute altogether disposed for the future of the question of the validity of the taxation, and of course falls completely within the ruling of the insular cases respecting the constitutionality of the analogous law for Porto Rico—the Foraker Act. No reasonable mind could doubt that the fair and natural inference from this act is that Congress had followed the proceedings in the tariff field respecting the Philippines and approved what had been done, although so far without specific ratification as to the past. In other words, this act throws light on the real intendment of Congress in the ratifying act of the following July.

It is certainly difficult to a plain apprehension approaching the confirming act of July 1, 1902, and reading the language in the light of the previous facts which we have briefly set forth, to conceive that Congress did not mean to foreclose this subject when it approved, ratified, and confirmed the action of the President as set forth in his order of July 12, 1898,

together with the subsequent amendments of said order, and approved the action of the authorities of the government of the Philippine Islands taken in accordance with the provisions of said order and subsequent amendments. With deference, it seems like ignoring the plain meaning and searching for hidden significance and distinctions which were not at all in the mind of Congress and do not really exist, to say that the statute was meant to ratify the President's action only so far as taken by virtue of his *undoubted* authority as Commander in Chief, and approved only those proceedings and doings of his subordinate officers which were in *unquestioned* accordance with the provisions of the order; that is, as applicable only before April 11, 1899; because all those actions of the Executive (prior to April 11, 1899) were unquestionably valid without ratification by Congress under established principles of public law. Long before the act was passed this court said so when it decided in *Dooley* v. *United States* (182 U. S., 222) that the Executive action imposing duties upon goods imported into Porto Rico up to the date of ratification of the treaty of peace was entirely valid. The force and significance of the language used and the impossibility of restraining it to the time and the Executive action before April 11, 1899, unless the words of the statute are wrested from their obvious and natural import, are set forth in the brief of the Attorney-General on the petition for rehearing at pages 16–21, and it is not necessary for us to repeat now the contentions there pre-

sented, which, indeed, seem to be so plain and so logically necessary as to forbid question. Whatever the correct conclusion may be on the question of power, we submit that there can be no doubt whatever about the *intention* of Congress in the ratifying act. On this branch of the case we quote again the text of sections 1 and 2 of the act of July 1, 1902, with assured confidence that the language alone, reasonably construed in the light of all the circumstances, constitutes an unanswerable argument:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the action of the President of the United States in creating the Philippine Commission and authorizing said Commission to exercise the powers of government to the extent and in the manner and form and subject to the regulation and control set forth in the instructions of the President to the Philippine Commission, dated April seventh, nineteen hundred, and in creating the offices of civil governor and vice-governor of the Philippine Islands, and authorizing said civil governor and vice-governor to exercise the powers of government to the extent and in the manner and form set forth in the Executive order dated June twenty-first, nineteen hundred and one, and in establishing four executive departments of government in said islands, as set forth in the act of the Philippine Commission, entitled "An act providing an organization for the departments of the interior, of commerce and police, of finance and justice, and of public instruction," enacted September sixth,

nineteen hundred and one, is hereby approved, ratified, and confirmed, and until otherwise provided by law the said islands shall continue to be governed as thereby and herein provided, and all laws passed hereafter by the Philippine Commission shall have an enacting clause as follows: "By authority of the United States be it enacted by the Philippine Commission." The provisions of section eighteen hundred and ninety-one of the Revised Statutes of eighteen hundred and seventy-eight shall not apply to the Philippine Islands.

Future appointments of civil governor, vice-governor, members of said Commission, and heads of executive departments shall be made by the President, by and with the advice and consent of the Senate.

SEC. 2. That the action of the President of the United States heretofore taken by virtue of the authority vested in him as Commander in Chief of the Army and Navy as set forth in his order of July twelfth, eighteen hundred and ninety-eight, whereby a tariff of duties and taxes as set forth by said order was to be levied and collected at all ports and places in the Philippine Islands, upon passing into the occupation and possession of the forces of the United States, together with the subsequent amendments of said order, are hereby approved, ratified, and confirmed, and the action of the authorities of the government of the Philippine Islands, taken in accordance with the provisions of said order and subsequent amendments, are hereby approved: *Provided*, That nothing contained in this section shall be held to amend

or repeal an act entitled "An act temporarily to provide revenue for the Philippine Islands, and for other purposes," approved March eighth, nineteen hundred and two.

III. THE POWER OF CONGRESS.

Immediately after the case of the *Diamond Rings* was decided in December, 1901, Congress took up actively the investigation of Philippine conditions, including the tariff. The legitimate view of the failure to act earlier, in contrast with the relatively prompt action on Porto Rico, is that the distinction between the cases because of the insurrectionary fighting, supposed to exist until that decision was announced, was regarded as giving the President ample power. Congress trusted the Executive to act providently and rightly in that novel and distant field, presenting difficulties and problems totally foreign to any previous national experience. The proceedings of the Executive were known and certainly not disapproved by Congress, but, unlike Porto Rico, for many obvious reasons, the situation was not, previous to December, 1901, in the judgment of Congress, ready for exact affirmative legislation. If this view also leaves an impression that there was some doubt and timidity in the mind of Congress, not entirely removed by the general vote of confidence and authority of the Spooner amendment, our reply is that, on the contrary, the response of Congress, as soon as the court's view was known on the correlative case (as it must now be viewed) of the *Diamond Rings*, showing that belief in the amplitude

of the war power was probably not well founded and requiring specific legislation, was a prompt and generous ratification of all the Executive acts. There might very naturally have been some previous doubt about this unknown oriental task; if there were also previous timidity, that was fully atoned for, but the Spooner amendment appears to repel all such suggestions, so far as relates to the conception then prevailing in Congress as to the power, good judgment, and sound discretion of the Executive.

At all events, Congress now took up, in December, 1901, the task in detail. Bills were presented defining the tariff relations of the Philippine Islands to the United States and the rest of the world, and in a comparatively short period the Philippine tariff act of March 8, 1902, *ante*, was enacted. During these intervening months and throughout the spring of 1902 the whole subject of the Philippines was carefully examined by Congress; there were protracted hearings before committees, evidence was taken, and all that was done under American occupancy, revenue needs, the existing tariffs, etc., were scrutinized and discussed. (Sen. Doc. No. 171, 57th Cong, 1st sess.; Hearings before Senate Committee on the Philippines, Sen. Doc. No. 331, 57th Cong., 1st sess., pp. 149–154; Hearings before House Committee on Insular Affairs, 57th Cong., p. 139; Attorney-General's Brief on Petition for Rehearing, pp. 11–13.) The result was the act of July 1, 1902.

[a] Printed for the use of the Committee and not published in the Congressional document series.

We have presented to the court the authorities on the effect of a subsequent ratification as equivalent to a prior mandate. (Brief for the United States, pp. 21–26; brief of the Attorney-General on petition for rehearing, pp. 21–23). They amount to this, that if the legislature could originally have conferred power, it can afterwards ratify with full effect and approve and justify the mistaken exercise of authority. This principle probably covers a plain usurpation of authority, the legislature, when no violation of constitutional guarantees or disturbance of vested rights appears, being the final judge of the necessity and propriety of the previous unauthorized act. Much more should the principle be applied where there can not be the slightest doubt of the high purpose and right intention of the Executive; where there was just doubt whether his power was not ample *ab origine*, explaining the delay of the legislature—a doubt not only existing prior to the *Diamond Rings* decision, but fairly persisting until the decision in the cases at bar, because there was until then persuasive reason for saying that the *Diamond Rings* case was not the exact correlative of these cases. And, further, much more should the principle be applied here, because, proceeding *bona fide* under authority believed to exist, the Executive was performing in the field of the highest national duty and international relations the work of blazing out a safe path in the depths of an unknown tropical forest, while all the world (it is not mere rhetoric to add) looked on and awaited the issue with suspended judgment.

Now, the decision in *Downes* v. *Bidwell* makes it certain that on April 11, 1899, Congress might constitutionally have enacted the law which was passed on March 8, 1902. Congress was not ready to take analogous action on the much less difficult problem presented in Porto Rico until April 12, 1900 (31 Stat., 77); and in that case Congress did not deem it necessary to ratify for the previous period intervening between the ratification of the treaty and the date when the Porto Rican act took effect. It is not rational to suppose or expect that Congress can be ready or ought to be ready *eo instante* upon ratification of a treaty, to provide a tariff for an insular possession, as it may constitutionally do.

What good reason can be given for not according to this ratifying legislation the usual effect of the rule? There is certainly no violation of constitutional guarantees in the way; there is no confiscation of vested rights, as we shall endeavor to show later.

We have already analyzed the doctrine of subsequent ratification as applied to this case, and discussed the subject fully, and need not repeat what we have already said. (Brief for the United States, pp. 26, 27; brief of the Attorney-General on petition for rehearing, pp. 21–23.) We stand on the proposition that Congress did by its enactments of March, 1901, and March and July, 1902 (the two former as preliminary and manifesting policy and intention, the latter as covering the past completely), accomplish as of the earlier date what it might have accomplished on

the earlier date. It acted *nunc pro tunc* within the rule, and ratified with the effect of a previous authority conferred.

But one of the briefs before the court on the original hearing (brief filed for certain claimants by Messrs. Herbert and Micou, pp. 22–25) insists that the ratification by Congress is without effect; that Congress could not have authorized in the first place, and therefore could not ratify afterwards; that authority originally conferred would have been an illegal delegation to the Executive of legislative power, and therefore that the entire substructure of the Government case must fall. The answer to all that line of argument is plain and brief; the case does not at all involve the notion of an attempted delegation of legislative power. Of course it is true that the legislature can not ratify what it can not authorize, and the power to do a thing or to authorize it to be done *nunc pro tunc* implies present right. But that does not affect our argument. There has never been a time since the declaration of war against Spain when Congress could not have authorized the President to do what was done here, although that would have been supererogation as to the period ending with the treaty ratification. We shall endeavor to state the point briefly and clearly: The President during the war emergencies directed his officers to act in a certain way, to collect duties under a provisional tariff. If his orders to that effect before the treaty took effect were, technically, legislation, that was valid legisla-

tion beyond question, and needed no authority or ratification from Congress. These orders fell, let us say, as valid legislation on April 11, 1899, but the President continued to do the thing prescribed without immediate authority. He did not legislate; he did not reestablish former legislation; he simply acted and continued to act. At that moment and ever since Congress could have stepped in, as it finally did, and legislated by enacting a Philippine tariff law. This the President would have enforced by continuing to do precisely what he had done before under his own orders and what he actually did in the absence of a statute and actually did under the statute when finally enacted. His orders, originally valid as war-power legislation, furnished the model and constituted, indeed, an identical forerunner of the ultimate law of Congress. But he was simply acting after April 11, 1899, not legislating. If Congress had legislated on April 11, 1899, the President would not have been authorized to legislate, but to act under the legislation of Congress, just as he was authorized to act and not to legislate in Porto Rico in May, 1900, by the Foraker act; the only difference being that the Foraker act covered the entire field of civil administration in Porto Rico, while the Philippine tariff act of March, 1902, dealt only with the tariff side of the Philippine case. Now if that authority to act had been the effect and the true aspect of the Philippine tariff law, supposing it to have become law on April 11, 1899 (as it was the effect and

function of the law when finally adopted), there is no conceivable reason why the complete ratification of July, 1902, does not relate back in the same way and validate from every point of view the intervening imposition and collection of duties. We have already presented this conception of the matter in somewhat different language (Brief for the United States, p. 27) and do not deem it necessary to reiterate the argument further.

To return for a few moments to the general doctrine—it is certain that the decisions in the *Mattingly* case (97 U. S., 687) and in *Hamilton* v. *Dillin* (21 Wall., 73, 96) distinctly rule that Congress has the power to validate the collection of taxes which were invalid by reason of a failure of Congress to act when collected, or to authorize the collection in advance. In *Anderson* v. *Santa Anna* (116 U. S., 356) and in *Bolles* v. *Brimfield* (120 U. S., 759) Mr. Justice Harlan for the court sustained the rule on ratification whenever the statute only confirms acts which the legislature might lawfully have authorized in the first instance. In the latter case he said:

> Could the legislature, by subsequent ratification, make that legal which was originally without legal sanction, but which it might, in the first instance, have authorized? A negative answer to this question would be in conflict with numerous decisions of this court upon the general question as to the power of a legislature to enact curative statutes when not restrained by constitutional provisions.

In *Bridgeport* v. *Housatonic R. R. Co.* (15 Conn., 475) the court say:

> Although individuals may not have power to make good *ab initio* that which was originally void, by subsequent deeds or acts of confirmation, yet this can not be true of acts of sovereignty—acts of legislation not conflicting with constitutional right. And in giving a construction to such an act, the only question can be, What was the intention of the legislature? When this is ascertained, our duty is imperative to give to that intention its legal effect. * * * The end of all confirmatory laws, so far as they are intended to be retroactive, is to set up and give original effect to acts before void or inoperative.

In *Wilkinson* v. *Leland* (2 Pet., 662) the court, by Mr. Justice Story, held that a retrospective act may give validity to a void transaction, if it does not divest the settled rights of property. "It can not be doubted that an act of Parliament may by terms of confirmation make valid a void thing if such is its intent." (Citing well-known ancient authorities.) Further cases on the maxim and rule respecting ratification, additional to those cited in our original brief, are—

State v. *Squires*, 26 Ia., 340;
Grogan v. *San Francisco*, 18 Cal., 590;
McCauley v. *Brooks*, 16 id., 1, 27;
McCracken v. *San Francisco*, id., 591;
Brady v. *Mayor, etc.*, 16 How. Pr., 432;
Zottman v. *San Francisco*, 20 Cal., 97;
Peterson v. *Mayor, etc.*, 17 N. Y., 449;

Schneck v. *City of Jeffersonville*, 152 Ind., 204; *Marks* v. *Purdue University*, 37 Ind., 155.

As to precedents and analogies in other legislation by Congress—the situation was different during the civil war, because on the one hand the war power was determined to be ample, and on the other hand Congress was in close touch and legislated as fast as emergencies or needs arose, although there was singularly little legislation considering the great occasion, the general conduct of the war being left to the Executive substantially without challenge or interference. However, section 3 of the act of August 6, 1861 (12 Stat., 326), provided that all the acts, proclamations, and orders of the President after March 4, 1861, respecting the Army, Navy, and volunteers, "are hereby approved and in all respects legalized and made valid to the same intent and with the same effect as if they had been issued and done under the previous express authority and direction of the Congress of the United States." It is on this statute that Justice Grier comments in the *Prize Cases* (2 Black, 635, 670, 671), sustaining the principle of law regarding subsequent ratification and holding that if it were necessary to invoke the principle in that case the statute has operated perfectly to cure any defect. He cites *Brown* v. *United States* (8 Cr., 131–133), and notes further that although Mr. Justice Story dissented from the majority of the court on the whole case, the doctrine stated by him on this point is correct and fully substantiated by authority. A similar act, very sweeping in its terms, was passed

on March 2, 1867 (14 Stat., 432), ratifying all the acts and orders of the President respecting martial law, military trials, etc., as fully as if said orders and acts had been issued and done "under the previous express authority and direction of the Congress of the United States and in pursuance of a law thereof previously enacted and expressly authorizing and directing the same to be done." Express constitutional grants covered all such exercises of power, and yet since the life and liberty of individuals were affected, there might have been some tenderness and doubt whether the public safety required the action, to which considerations of abundance of caution and possibility of scruples are probably due the precise and detailed references in the ratifying act to previous express authority, placing the matter beyond peradventure as to the intent of Congress. But no one then seems to have entertained any doubt of its power to ratify, and in the present cases we submit that the intent is as clear, though not expressed with such anxious inclusion and iteration of language, as in the civil war acts.

We may note in passing that in *Hamilton* v. *Dillin* Mr. Evarts argued that the statute did not validate that which was illegal before; "no act can be construed to do this unless this be the plain purpose of the lawmaker." The court will observe how little there was in the law there involved which bore upon the right of the President to license traffic and impose a bonus—which really authorized what he did. There was only an implied recognition and ratification, and yet the

court found that sufficient to show the approval of Congress, if indeed it were necessary for Congress to approve at all.

As to other precedents, *Cross* v. *Harrison* (16 How., 164, 201) speaks of two acts of Congress which "adopted and ratified all the acts of the Government established in California upon the conquest of that Territory, relative to the collection of imposts and tonnage," but the opinion does not cite these acts and we are unable after careful search to identify any statutes of that period which justify this description as adopting and ratifying all the acts of the Territorial government respecting the collection of duties. Yet there stands the view of the court as to the right and power of the legislature to ratify after the event—and the same event as here.

In the Louisiana case the act of October 31, 1803 (2 Stat., 245), authorized the President to take possession of the Territory and exercise the powers of government temporarily. The Spooner amendment follows the language of that law almost *totidem verbis*. The subsequent statutes respecting Louisiana (November 25, 1803, 2 Stat., 248; February 24, 1804, id. 251; March 19, 1804, id. 272; March 26, 1804, id. 283) set up a territorial government and provided customs law almost as soon as possession was actually delivered; there were not really any Executive acts of doubtful or challenged authority in the short interval, and there was therefore no need of a ratifying and confirming act. This is the difference between the Louisiana and Phil-

ippine situations. The Florida case was substantially the same as that of Louisiana. There was no appreciable interval between possession and sufficient Congressional action.

In *The Grapeshot* (9 Wall., 129), the question of ratification arose in this way: "How far * * * the President could establish a provisional court, and how far Congress, on the suppression of the rebellion, could by its enactment validate the doings of such a court, transfer its judgments," etc. The Supreme Court held that the provisional court of Louisiana was properly established by the President in the exercise of his constitutional authority during the war. The act of Congress enacted July 28, 1866 (the official termination of the war in Louisiana was April 2, 1866, proclamation of President Johnson, 14 Stat., 811), provided that all suits in the provisional court proper for the jurisdiction of the Circuit Court of the United States should be transferred to that court and heard and determined therein, and that all judgments, orders, and decrees of the provisional court in causes transferred to the Circuit Court should at once become the judgments, etc., of that court. Upon this state of facts the opinion of the Supreme Court in the *Grapeshot* case also held that Congress had power on the close of the war and the dissolution of the provisional court to provide for the transfer of cases pending in that court and of its judgments and decrees to the proper courts of the United States. Since the war power was exhausted in Louisiana on April 2, 1866, the act of Congress was in

effect a ratification of unauthorized executive action for the period from April 2 to July 28, when the statute was enacted.

So that, so far as there are precedents in our history, they sustain the view that Congress clearly possesses the power under such circumstances to ratify Executive measures taken without previous authority. It is plain that constitutional guarantees are not violated; it is equally plain, we think, in this case, that there is no interference with valid vested rights of property.

IV. THE NOTION OF VESTED RIGHTS AND THE MATTER OF PROTEST.

These points of a vested right and of protest affect each other and affect and are affected by the power of Congress to ratify executive acts. We are not therefore carrying the discussion outside the limits laid down by the court in dealing with them. We have already touched upon the claim of vested rights (Additional brief for appellee, p. 2; brief of Attorney-General on petition for rehearing, pp. 21–23). All that can be said on behalf of this claim in the light of the views expressed in *De Lima* v. *Bidwell* is that the presumption in respect to ambiguous legislation claimed to affect previously existing rights is ordinarily against a retroactive effect; but such presumption does not obtain in case of an express ratification like this, intended on its face to be retroactive. When or why did these mere claims for tax refunds (surely not very just or equitable when all the facts are regarded) become a fixed and sacred right? The idea of the vest-

ing of a property or personal right involves great constitutional principles, and runs to those legal foundations which are sacred. Counsel for the claimants here simply assert that upon filing their petition they acquired a vested right to recovery which could not be taken away by subsequent legislation, relying on the expressions of *De Lima* v. *Bidwell* regarding legislation very different from this. (Brief for plaintiff in error and appellant, pp. 26, 27.) Counsel for certain other claimants support the argument on this branch of the case, viz, that Congress was without power to ratify the collection of these duties because rights had vested, by the suggestion that otherwise the fifth amendment to the Constitution is violated in that private property would be taken for public use without due process of law and without just compensation. (Brief of Messrs. Herbert and Micou, pp. 25 et seq.) Those clauses of the Constitution have been haled into many strange causes, but never into one more remote from their real meaning and application. It is idle to discuss that aspect; there is no sacred guarantee which has vested these claims.

Now let us look at them as they really are: The claimants were very willing to pay the duties in order to trade; they were fully aware of the exaction and were under no compulsion; they shifted the burden placed on them to their customers by adding the duties to the price for their merchandise; and now they are very willing to recover this amount again from the

Government. Does the simple putting of the claim in suit have the effect alleged? We can not think so. There is no essential reason in law or logic why the claimant who puts in his claim at any time within the general limitation of actions, but after the ratifying statute, should be worse off than he who by accident, most likely, has hit upon a time prior to the ratifying statute. The law only requires a uniform and moderate degree of diligence, "*infra sex annos*" (act of March 3, 1887, 24 Stat., 505), and does not give graduated premiums for different degrees of speed; and the ratifying statute, having a quite contrary intention, should not be construed as establishing a new rule of limitation by which those who had not already happened to act on July 1, 1902, or who were not aware that the law was about to be enacted and might have the effect now claimed, are cut off from remedy. This does not seem like equal rights or equality under the law; but our argument here goes to the absurdity of the idea of a vesting before the ratifying statute, and we say, nevertheless, that if the court should be convinced on all grounds that Congress did not ratify, this conclusion should be placed on the manifest ground of a lack of power (as to claims already filed and "vested") rather than a lack of intention; and then in that case the Government would stand, necessarily and as in duty bound, on the exclusion of those claimants who failed to bring suit before July 1, 1902. (See p. 23, brief of Attorney-General on petition for rehearing.)

Now what is the bearing of protest on this question of a vested right? Simply that the claims never were secure and valid; that the right never vested at all and filing a suit could not cure earlier defects; that the payments were voluntary and can not be recovered back; that there was no protest against the exaction at the time, in any sense, and that the necessary result of lack of proper protest is to deny the claim, under many decisions of the court, including very recent cases. (*Elliott* v. *Swartwout*, 10 Pet., 137; *Bend* v. *Hoyt*, 13 Pet., 263; *Converse* v. *Burgess*, 18 How., 413; *Philadelphia* v. *Collector*, 5 Wall., 720; *Nicholl* v. *United States*, 7 Wall., 122; *Wright* v. *Blakeslee*, 101 U. S., 174; *Barney* v. *Rickard*, 157 U. S., 352; *Chesebrough* v. *United States*, 192 U. S., 253.)

We can see no essential difference between the "cotton bonus" of *Hamilton* v. *Dillin*, which was manifestly a tax, and the tariff duties in the present cases. There is no difference whatever in principle. That was an exaction imposed under Executive order without any clear previous authority from Congress, for it is evident from the terms of the law and the language of the court that the authority was matter of implication, and, in in short, was not distinctly and certainly given. There was a subsequent ratifying act in general terms, which we have pointed out, but the court justified the exaction mainly on other grounds, viz, the competence of the war power.

It is evident that in *Hamilton* v. *Dillin* there was no protest. Mr. Evarts's argument was that no formal

protest was necessary to enable the plaintiff to recover, because there is no statute providing for protest in such a case; the exaction was wholly foreign to the purpose of the act or any act of Congress, so that there could be no provision for protest; nor was the payment a voluntary payment; the rules, the refusal to grant permits, the presence of the army to aid in the seizure of the cotton, the necessity of shipment to loyal States, great loss, etc., show it was a forced payment. This was the course of his argument. The court say:

> The Government chose to impose this condition. It supposed it had a right to do so. No one was bound to accept it. No one was compelled to engage in the trade. Not the least compulsion was exercised. The plaintiffs endeavor to put the case as if they were obliged to pay this exaction to save their property. This is not a true view of it. It is admitted that the property was purchased under the license. If so, it was also purchased in view of the regulations to which the license referred. The regulations themselves show that the permit to purchase and the permit to export were correlative to each other; that no one was permitted to purchase who did not enter into bond to pay all fees required by the regulations, amongst which the charge of 4 cents per pound on cotton was expressly inserted. In short, the permit to purchase and export constituted substantially one permit, and that was granted only on the condition of paying the prescribed fees, as before stated. The clearance of particular lots or cargoes required afterwards, when the property

was actually shipped, was necessary to show that the stipulated conditions had been complied with, and that the particular articles specified were free for transportation. The whole series of acts constituted, so far as the right to trade and transport was concerned, but one transaction—a conditional permission given on the part of the Government and the acceptance of and compliance with that condition on the part of the trader.

The position in which the plaintiffs put themselves, therefore, was an entirely voluntary one. They have no right now to say: "It is true we purchased the cotton under a license which required us to pay a certain bonus; but, having purchased it, we were entitled to repudiate the condition, although we had no right to make the purchase except by virtue of the license." Much less have they now a right to say, after having complied with the condition without murmur or objection, that the bonus was extorted from them by compulsion.

Whether, therefore, the President and Secretary of the Treasury did or did not rightly judge as to their powers under the act, the plaintiffs evidently agreed with them and voluntarily applied for permission to engage in the trade on the conditions imposed, and voluntarily paid the bonus which is now sought to be recovered back. The case does not come within the class of cases on which the plaintiffs rely to take it out of the rule as to voluntary payments. In our judgment, therefore, the defense in this case might have rested on this ground alone. (21 Wall., 91, 92.)

The present cases are at least as strong on the point of claimants' freedom from compulsion and as to their control over their property; they could simply decline to trade and seek another market. Their eyes were wide open to the facts before their cargoes sailed. There does not appear to have been any protest whatever in the pending cases, not even an informal one, much less the formal and technical protest usual in customs transactions, although we do not contend, and do not need to contend, that the latter was necessary, or, indeed, available, under the law applicable to the Philippines.[a]

The petition in the *Lincoln* case says that the military officer acting as collector assessed duties and they were paid by petitioners' agents, "but under duress and by compulsion in order to enable your petitioners' business to be carried on." It is apparent from the face of the petition that the petitioners had no notion that the duties were illegally exacted until they were "advised by counsel" that "the imposition and collec-

[a] Even before our own original law of February 26, 1845 (5 Stat., 727), prescribing a formal written protest, was adopted, some notice at least was always necessary to sustain a claim for refund (*Elliott* v. *Swartwout*, 10 Pet., 137; *Bend* v. *Hoyt*, 13 Pet., 263), even if merely verbal (*Swartwout* v. *Gihon*, 3 How., 110). In the Philippines from the beginning of our government, although a definite form was not then necessary, "objections to the assessment of duty" must be made before payment, failing which no refund was made (par. 10, Provisional Tariff and Regulations, G. O. No. 10, Military Governor of the Philippines, Oct. 26, 1898); and on February 6, 1902, the Philippine Commission enacted a customs administrative act, modeled closely after our own, and, specifically, as to the protest prescribed (1 Laws Phil. Com., 788, 853, sec. 286). As to the previous Spanish law on which the provisional tariff was declared to be based, there were specific provisions relating to protests, which were to be made within stated periods of time varying according to the ground of objection. (Berriz, Diccionario de la Administracion de Filipinas, 1891, p. 21.)

tion of said duties * * * were in violation of the rights and privileges secured to your petitioners under and by virtue of the provisions of the Constitution and laws of the United States and the said treaty of peace between the United States and Spain." The fact is the same in the *Warner-Barnes* case.

The position in *Cross* v. *Harrison* was manifestly identical. The court say that the importers knew there was an existing civil government instituted by authority of the President; that it had not ceased when their importations were made; that it was afterwards continued, and rightfully, until California became a State; "that they were not coerced to land their goods, however they may have been to pay duties upon them; that such duties were demanded by those who claimed the right to represent the United States, who did so, in fact, with most commendable integrity and intelligence; that the money collected has been faithfully accounted for," etc. (16 How., p. 201.)

I am entirely unable to see why this point is not to be resolved against the importers just as it was in *Hamilton* v. *Dillin* as to the internal-revenue cotton bonus, and as it was in *Cross* v. *Harrison* as to the war tariff imposed at San Francisco. In all these cases the importers were not bound to trade; they did not protest; their payments were voluntary, and as the court said in *Hamilton* v. *Dillin*, it is not legal or just for the plaintiffs to say, "It is true we purchased under a license which required us to pay the tax, but having purchased, we were entitled to repudiate the condi-

tion," etc. There the traders did not have the right to say, after having complied with the condition without murmur or objection, that the bonus was extorted from them by compulsion. Here the Philippine importers have no greater right.

It is true that the court has given claimants apparent reason to claim a vested right which the later ratifying legislation could not disturb, because in *De Lima* v. *Bidwell* it was held, adversely to the Government contention that the act of Congress of March 24, 1900, applying for local benefit the customs revenues received here on Porto Rican imports after the evacuation by the Spanish forces, was a recognition of the fact that Porto Rico continued to be a foreign country, etc., that this can clearly have no retroactive effect as to moneys theretofore paid *under protest* for which an action to recover back had already been brought.

> As the action in this case was brought March 13, 1900, eleven days before the act was passed, the right to recover the money sued for could not be taken away by a subsequent act of Congress. Plaintiffs sue in assumsit for money which the collector has in his hands, justly and equitably belonging to them. To say that Congress could by a subsequent act deprive them of the right to prosecute this action would be beyond its power. In any event it should not be interpreted so as to make it retroactive [citing authorities]. (182 U. S., 199–200.)

But the differences are manifest. To begin with, the act in the Porto Rican case was a mere direction

for the use of moneys in the treasury, and the retroactive effect claimed by the Government rested wholly on inference. Here the retroactive effect is a necessary and intended part of the law, manifest on its face. The authorities cited for the court's ruling on the point in the *De Lima* case are all State cases and can hardly overthrow the two cases in this court (*Hamilton* v. *Dillin; Cross* v. *Harrison*), in which the point was ruled against the motion of a vested right under circumstances precisely similar to the present case. Furthermore, in the *De Lima* decision the court say (referring still to the special act of March 24, 1900): "Perhaps we may go further and say that so far as these duties were paid voluntarily and without protest the legality of the payment was intended to be recognized." Here there was no protest, and therefore when the court says that the act of 1900 can clearly have no retroactive effect as to moneys theretofore paid under protest for which an action to recover back had already been brought, it is plainly meant that protest as well as suit was necessary to make the vested right; suit alone was not sufficient.

Finally, the case of *Chesebrough* v. *United States* (192 U. S., 253) is a very strong statement of the doctrine about voluntary payments and protests. "The rule is firmly established that taxes voluntarily paid can not be recovered back, and payments with knowledge and without compulsion are voluntary." Even when taxes are paid under protest or with notice that the payer contends that they are illegal and intends to

institute suit to compel their repayment, "a recovery in such a suit may on occasion be had, although, generally speaking, even a protest or notice will not avail if the payment be made voluntarily, with full knowledge of all the circumstances and without any coercion by the actual or threatened exercise of power possessed, or supposed to be possessed, by the party exacting or receiving the payment over the person or property of the party making the payment, from which the latter has no other means of immediate relief than such payment."

That case related to internal-revenue stamp taxes, and decided that the purchase of stamps was purely voluntary and there could be no recovery without protest or notice, written or verbal, formal or informal; that protest or notice is clearly demanded for the protection of the Government and without it there would not be the slightest vestige of involuntary payment.

It is proper to say that this issue—the main question—can in no way affect the *credit* of the Executive. The course pursued was the only course which could have been pursued consistently with the executive duty—at first under the war power, then under the belief that the war power continued and that the decisions of the Supreme Court would justify its exercise (see cablegram of Secretary Root to Judge Taft, June 8, 1901; p. 8, Brief of the Attorney-General on Petition for Rehearing), and finally under the legislation of Congress of March and July, 1902. It was

the plain executive duty to collect and continue to collect these taxes (see *Cross* v. *Harrison*, *ubi supra*, p. 28 hereof); it was not for the Executive to anticipate or speculate upon a future adverse decision of the Supreme Court, which did not, in reality, settle the war-power feature until the recent decision herein. If the Executive had undertaken to construe the issue in advance and ceased to collect, say in June, 1901, and the court had sustained its exercise of power theretofore, error would have been committed and the Government prejudiced irreparably by the wrong judgment of the Executive. Valid taxes would have been lost forever; while, on the other hand, if the collection of duties continued, the claimants could bring the issue to judicial determination, as we now see.

It is evident that the present issue is entirely different from any of the previous insular cases. As the evolution herein has proceeded there is now no question of domestic or foreign territory, war power, constitutionality of an insular tariff act of Congress—the only questions are whether Congress has ratified, and, consequent on that question, whether claimants possess any vested rights or whether their payments were voluntary.

We respectfully ask the court to read in connection with this brief the passages in our earlier briefs to which we have referred herein. Those citations aid the logical development of our argument, and it does not

seem necessary to lengthen this brief by reprinting and incorporating here the passages in question.

On the whole case we respectfully and confidently submit—

That Congress intended by the act of July 1, 1902, to ratify the executive collection of tariff duties in the Philippine Islands after April 11, 1899;

That Congress possessed the power of such ratification unaffected by the claim of adverse vested right;

That the payments herein were voluntary, with full knowledge, without compulsion, and not under protest, formal or informal;

That for all these reasons there can be no recovery, and the judgments below should be affirmed.

WM. H. MOODY,
Attorney-General.

HENRY M. HOYT,
Solicitor-General.

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Office Supreme Court U. S.
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FEB 10 1906
JAMES H. McKENNEY,
Clerk.

Nos. 149 and 466.

In the Supreme Court of the United States.

OCTOBER TERM, 1904.

FREDERICK W. LINCOLN, HENRY W. PEABODY, JOHN R. Bradlee, and Charles D. Barry, trading as copartners, under the firm name and style of Henry W. Peabody & Co., plaintiffs in error,

v.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

WARNER, BARNES & CO. (LIMITED), APPELLANT,

v.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

ORAL ARGUMENT OF THE ATTORNEY-GENERAL UPON REHEARING.

JANUARY 19, 1906.

In the Supreme Court of the United States.

OCTOBER TERM, 1904.

FREDERICK W. LINCOLN, HENRY W. PEABODY, JOHN R. BRADLEE, and CHARLES D. BARRY, trading as copartners under the firm name and style of HENRY W. PEABODY & CO., plaintiffs in error,
v.
THE UNITED STATES. } No. 149.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

WARNER, BARNES & CO. (LIMITED), appellant,
v.
THE UNITED STATES. } No. 466.

APPEAL FROM THE COURT OF CLAIMS.

ORAL ARGUMENT OF THE ATTORNEY-GENERAL UPON REHEARING.

MAY IT PLEASE YOUR HONORS: I shall confine my discussion of this case to the single question, whether the collection of the duties, before the court, which were collected upon goods coming from the United States into the Philippine Islands, by the order of the President, between the date of the exchange of the

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ratifications of the treaty of peace with Spain and the date of the imposition of the Philippine Commission tariff, has been ratified by Congress by the act of July 1, 1902. I shall leave to the Solicitor-General the further question in the case, the power of Congress, under the Constitution, to ratify the collection of such duties.

It is very evident that the question which I propose to discuss received very little consideration, at least in the argument on the part of the Government on the former hearing of this case, so little, I believe, that in the briefs the act which was relied on to effect the ratification was not even set forth by the Government, but merely referred to. So far as the question of ratification was touched at all, the discussion apparently dwelt upon the power of Congress to ratify the collection of these duties, and it appears to have been assumed, on the part of the Government at least, that Congress had intended by the enactment of the law of 1902 to ratify their collection, and that it accomplished that purpose if power existed in the Congress to accomplish it. This consideration is the justification alike for the petition for rehearing and for a more extended presentation of this part of the case than I otherwise should have felt justified in offering to your Honors. And I am confirmed in this view by the argument of counsel for plaintiffs just closed, from which it is apparent that the Government has not yet been able—due to our fault, doubtless—to cause our opponents to understand the position which we take in this

case. The main endeavor of the argument of the Solicitor-General on the former hearing was to draw a distinction on account of the widespread insurrection in the Philippine Islands between this case and the Dooley case, which dealt with importations into Porto Rico. He relied upon the flagrancy of the insurrection in those islands as a sufficient justification of the continued existence of the war power of the President after the exchange of the ratifications of the treaty of peace with Spain. That question in the case has been disposed of finally by that part of the decision of this court which holds that the situation was ruled by the case of the *Fourteen Diamond Rings* (183 U. S., 176), and I do not for a moment seek to reopen it. The opinion further decided that the ratification statute did not cover the disputed conduct of the Government officials, because their action was not taken in accordance with the order of July 12, 1898; and the two reasons why it seemed to the court that their action was not in accordance with this order were, first, because that order, by its terms, applied only during the continuance of the war with Spain, and, second, because—as I understand it, at least—by its terms it did not impose duties upon goods coming from the United States.

Mr. Justice HOLMES. If I may make a suggestion—I was, of course, responsible for the form of the words that were used, and, by reason of some misgivings that I had, stated it as narrowly as possible; but I did not mean to exclude the view, which certainly was very

much considered by the court, that the words of the statute, irrespective of the President's order, could not properly be interpreted as having that wide effect.

The ATTORNEY-GENERAL. On account of the power?

Mr. Justice HOLMES. On account of the meaning of the words.

The ATTORNEY-GENERAL. I will come to that; but I venture to say that the language of the opinion did not suggest that to my mind.

Mr. Justice HOLMES. I am responsible for that.

The ATTORNEY-GENERAL. It will be my respectful submission to the court that those two propositions proceed upon an incomplete view of the facts of the case; and, after consultation with the Solicitor-General, I think it is my duty to say to the court that the Government was responsible for that incomplete presentation of the facts, and responsible for the reason that I have attempted to set forth.

Your Honors, the duties in question were collected between the date of the exchange of the ratifications of the treaty of peace and the date of the imposition of the Philippine Commission tariff. They were collected by the military subordinates of the President, under his orders as Commander in Chief of the Army and Navy, which, as they construed them, required them to collect duties upon goods coming from the United States into the Philippine Islands. It appears now—and it is the settled law of this case—that the Commander in Chief, from the moment of the exchange of the ratifications of the treaty, all during this disputed

period, had no lawful authority to collect, or to cause to be collected, duties upon goods coming from the United States into those islands. It therefore is clear that if the Government can prevail at all in this case it must prevail solely upon the theory that the action of the subordinate military officers in collecting these duties has been ratified by the act of July 1, 1902, and the authority at the time wanting thereby supplied.

In order to understand this case, it seems to me that it is necessary to consider, first, What the President and his subordinate officers did with respect to the collection of duties; and, second, What Congress either knew or should be presumed to have known with respect to the action of the President and his subordinate officers and the settled law applicable to the situation in 1902; and, third, What was the intention and will of the Congress as expressed in the statute which we claim to constitute a ratification?

In order to understand the significance of the action of the President and of his subordinates during the period in which these disputed duties were collected, it has seemed to me necessary to bring before the court the whole history of the collection of duties in the Philippine Islands from the time they were first imposed by the military authorities down to the time of the enactment of the Congressional tariff in 1902; for in that way only can we understand the significance of the action taken in the disputed period.

The naval battle of Manila Bay was fought on the 1st day of May, 1898, but it was not until the 13th of

the following August that Manila yielded to the attack of our forces, and for the first time we made an effective lodgment on Philippine soil. In the meantime, on the 12th day of the preceding July, the President had made the order for the collection of these duties at the bar of this court—the order of July 12, 1898, which is as follows:

EXECUTIVE MANSION,
July 12, 1898.

> By virtue of the authority vested in me as Commander in Chief of the Army and Navy of the United States of America, I do hereby order and direct that, upon the occupation and possession of any ports and places in the Philippine Islands by the forces of the United States, the following tariff of duties and taxes, to be levied and collected as a military contribution, and regulations for the administration thereof, shall take effect and be in force in the ports and places so occupied.
>
> Questions arising under said tariff and regulations shall be decided by the general in command of the United States forces in those islands.
>
> Necessary and authorized expenses for the administration of said tariff and regulations shall be paid from the collections thereunder.
>
> Accurate accounts of collections and expenditures shall be kept and rendered to the Secretary of War.
>
> WILLIAM MCKINLEY.

This order, however, was suspended by the President and not put into practical effect until the 10th day

of the following November. In the meanwhile, duties were collected under the old Spanish tariff, with a modification to provide for the importation of merchandise from Spain. Accompanying the order is an elaborate schedule of duties with regulations and directions for the guidance of the military subordinates, which show clearly the significance of the action of the President and which are as much a part of the order as if they were written in it. I need not say that when the order imposing the tariff of duties and taxes annexed the tariff itself to the order, the annexed part of the order became a part of the order itself. It can not, therefore, properly be considered or interpreted unless the schedules and regulations, which, as I have said before, are a part of the order, are considered with what may be called the enacting part of the order itself.

There are one or two general characteristics of the order which I think it is important to ascertain with precision before entering upon a discussion of its terms in detail. In the first place it was not, in any proper sense of the word, "legislation." It was a military order—it was an order of the Commander in Chief to his subordinates. Like all general orders that are intended to reach many persons, it has the superficial form of legislation, but in substance as well as in form (except its superficial form) it is an order from a military superior to a military subordinate. In Mr. Coudert's brief, I think, it was happily termed not "legislation" but "military legislation," which is but another way of saying that it is a military order—the order of a superior to a subordinate.

In the second place it was lawful at the time it was issued, not because Mr. McKinley, as the Civil Executive of the United States, had any such power as was exercised here, but by virtue of the fact that the Constitution had annexed to the Presidential office that of Commander in Chief of the Army and Navy. I regard his authority in that respect as precisely coterminous with the authority of the commanding general in the Philippine Islands, except so far as that officer might be controlled by the orders of a superior; and the limits of that authority are not found in the Constitution, but in the laws of war.

This order levied duties by its terms—I consider this vitally important, if your Honors please, and I think it essential that I should prove it—this order by its terms imposed duties upon goods imported from all quarters of the globe into the Philippine Archipelago—all quarters, including the United States. The Philippine Islands and the United States were then foreign to each other, and it was uncertain whether they would ever bear a different relation. In fact that uncertainty continued until the time the very last vote was cast in the Senate upon the ratification of the treaty.

But it applied to the United States and imposed duties upon goods coming from them, not because the United States were foreign to the Philippine Islands or the Philippine Islands foreign to the United States, but because of the generality of the language used. It is not a case like that which was before your Honors involving the interpretation of the Dingley law. In that case duties had been collected under the Dingley

Act, which by its very terms imposed duties upon goods coming from "foreign countries." The Philippine Islands, at one time being a foreign country, came within that description, and as well went out of it by the very terms of the act itself when they ceased to be foreign. There is no such language as that in this order, and none which fairly can be interpreted to be its equivalent. I should be bound to concede, if this order of the President had in terms imposed duties upon goods coming from "foreign countries," that instantly after the exchange of the ratifications of the treaty the United States ceased to come within the terms of the order itself—just as this court held that the moment Porto Rico and the Philippines Islands ceased to be foreign countries, they ceased to come within the terms of the Dingley law, which imposed duties upon articles imported from "foreign countries." I am bound by the decisions of this court to yield assent to the proposition that if this order by its terms had imposed duties on goods coming from "foreign countries," the authority under it to impose duties upon goods coming from the United States would have ceased immediately upon the exchange of the ratifications of the treaty. I should, I say, in that case be bound by the decisions of this court to concede that this order, by its very terms, at once upon the 11th day of April ceased to be applicable to imports from the United States.

But it is on other grounds—it is because of the use of other language than that used in the Dingley law

that this order imposed duties upon goods coming from the United States. In the first place—and I am asking your Honors' attention now to page 5 of the order itself, which is the first page of the regulations—it provided that every vessel upon its arrival should be placed under military guard until duly discharged. And, as it already has been suggested, it provided a form of oath for masters of vessels of other countries than the United States, and a different form of oath for the masters of American vessels. Again, in the next paragraph, it is provided that all goods, wares, or merchandise not duly declared on the manifest shall be subject to an additional duty of 25 per cent. By the next clause every vessel is bound to produce a manifest, and there is a special provision that the manifest of a vessel coming from a port of the United States shall be verified in one way and the manifests of vessels from other countries in another way. On page 7, section 9, it is provided that after the contents of these vessels have been compared with the manifests and found to agree therewith, the duties thereon shall be computed on the face of the entry. In the next section there is the further provision that any objections to the assessment of duty must be filed by the importer before payment by him of the same, and no refund of duty will be made thereafter. We have here general provisions requiring that duties shall be computed upon the face of the entry; that objection to any duty must be m[illegible]t the time by the importer before its payment, and that no refund will be made unless such objection is stated. I could

go through the whole of this order and show that every line of it is instinct with the thought that it applies not by any express words to goods imported from a foreign country—or any particular country or countries—but by the generality of its terms to goods which come into the Philippine Archipelago from any part of the earth's surface.

But that is not all. This tariff was sent to General Otis, who was in command in the Philippine Islands. A Captain Evans, who was an expert in tariff matters, under orders from the War Department that summer, went to the Philippine Islands for the purpose of revising and perfecting this tariff, which in fact he did. On September 28 General Otis sent this cablegram:

> United States tariff regulations not yet in force, though efforts made to that end. Intend to further delay application forty days from October first, as errors and inconsistencies which require correction discovered, and need time to make correction. Believe that immediate enforcement will seriously unsettle business and result in loss of revenue. Spanish tariff now applied and working satisfactorily.

To this the Secretary of War replied on October 13 as follows:

> By direction of the President, it is hereby ordered that the operation of the order dated July 12, 1898, establishing the customs tariff and regulations for ports in the Philippine Islands in possession of the United States, shall be suspended until the 10th day of November, 1898, when the same shall take effect and be in force.

On October 13 of that year, General Otis promulgated the amended and modified tariff and put it in force from the 10th day of November, 1898. The following paragraph added in that amended tariff before it became operative is of great significance: These duties "shall be collected in uniform manner, regardless of the country of origin or of exportation." It would be difficult to find language which would show more clearly than this does that the intent of the order itself was to place upon the one side the Philippine Archipelago and upon the other side all the rest of the habitable globe; and as the trade of the rest of the globe reached the shores of the Philippine Islands to impose a tariff upon it for military purposes and for the support of the government of those islands. Moreover, although the generality of the language used to my mind shows clearly and conclusively that by its terms—not argumentatively, because the United States were foreign to the Philippine Islands—this order imposed duties on goods coming from the United States, we have in addition a confirmation of that interpretation most convincing and conclusive. In the first place, there was no exemption of goods coming from the United States. Then, does not the fact that there actually were many clear exemptions make it evident that such goods were not exempted? I will bring some of these exemptions to your Honors' attention. On page 6 there was a provision for the imposition of light dues, with the exemption from such dues, which applied to all other trading vessels, of vessels

"belonging to or employed in the service of the Government of the United States." Again, on page 7, paragraph 19, after the provision in paragraph 18 that goods of all kinds imported into the Philippines should pay wharfage, it is provided that "merchandise imported, exported, or shipped in transit for the use of the Government of the United States, and coal, shall be exempt from wharf charges." And again, on page 8, paragraph 20, it is provided that there shall be levied an ad valorem tax, in addition to the regular duties, upon all goods coming into the Philippines, whether free or dutiable." But there is an exemption as to "merchandise imported or exported for the use of the Government of the United States." A further exemption appears in article 23, page 8, in this language:

> All supplies and materials for the use of the Army and Navy of the United States shall, under suitable restrictions to be prescribed by the commanding general, be admitted without payment of duty.

On page 27, paragraph 362, are the following exemptions:

> Exemptions and reductions shall in no case be granted in favor of any industry, public establishment, corporation, society, order, or person, whatever their character, except as provided for herein.

On this same page, paragraph 363, is contained the following exemption:

> Articles purchased with the funds of the Government of the United States, for its use,

> and material of all kinds intended for works executed by the provisional administrations, and not by contract, shall be exempt from import duty.

Then there is a long special free list, in which, however, goods coming from the United States are not included.

Now with this tariff, with its exemptions, clearly in view, and the fact that the order in the following October was amended so that in express terms it caused the tariff to be applied uniformly to all imports, whatever the country of origin or of exportation, can there longer be any doubt as to its proper interpretation? I respectfully submit there can be none. For by the terms of the order itself—not argumentatively from the fact that the United States was a foreign country at that time—but by the terms of the order itself, this tariff was to be uniformly applied to all goods coming into the Philippine Islands, including goods coming into those islands from the United States.

This necessary interpretation of the order and regulations to include goods coming from the United States was the interpretation that was actually placed upon them by the military authorities who collected the duties. No interested person ever claimed, so far as I am aware, that duties collected upon goods coming from the United States were not collected in accordance with the terms of the military order. I have in my hand a letter from the Secretary of War to the Senate committee (Senate

Document 171, Fifty-seventh Congress, first session), in obedience to its direction, to which I shall refer in detail later on. It is enough now to say that it contains the correspondence between the War Department and the interested merchants trading in the Philippine Islands, who were complaining, not that the schedules did not apply, but that they were so drawn as to operate in a discriminatory manner against goods coming from the United States and in favor of goods coming from other countries. Moreover, it clearly appears that at all times the income from customs duties was necessary to the maintenance of the government of the islands, and substantially the whole of that revenue would have been lost if goods from the United States had come into the Philippines duty free. This is proved by the testimony of Judge Taft when he appeared before the Senate committee long after the exchange of the ratifications of the treaty. His testimony on this point is found on pages 149 and 150 of the report of the Committee on Insular Affairs, House of Representatives, Fifty-seventh Congress, first and second sessions.

So, then, we have this practical interpretation, which grew out of the absolute necessities of the situation, confirming the interpretation derived from the plain meaning of the words themselves; for it is not difficult to see that the government of the Philippine Islands could not have run many days without the imposition of duties upon goods coming from the United States. In fact, one of the great political questions debated

during the years under consideration was whether the duties could be constitutionally, or ought to be morally, collected upon goods imported into the Philippines from the United States, and no one dreamed of denying—what the world knew—that such duties were, in point of fact, collected. Moreover, this court unanimously decided, in the Porto Rican case, that an order which differed in no material way from the one now at the bar, by its terms—before the exchange of the ratifications of the treaty, at least—applied to goods coming from the United States (*Dooley* v. *United States*, 182 U. S., 222). I therefore conclude that by the terms of this order, duties were imposed upon goods imported into the Philippines from the United States, and as we now know, by the unanimous decision of this court, lawfully imposed down to the time of the treaty.

The next consideration to which I desire to invite your Honors' attention is that this order is not limited to the duration of the war with Spain. It is, on the contrary, unlimited in point of time. It is unlimited not only because there is no expression of limitation in it, but because the order contains a positive affirmative paragraph prescribing that it shall be unlimited. It is the last paragraph on page 28 of the Customs Tariff and Regulations, and reads as follows:

> The foregoing schedules and provisions based upon the tariff and taxing laws heretofore in operation in the Philippine Islands, including such other taxes and exactions heretofore collected, as in the discretionary judgment of the

commanding general shall be considered proper and necessary, shall be and remain in force until duly modified, suspended, or revoked.

What have we, then, on April 10, 1899, the day before the exchange of the ratifications of the treaty? We have an order from the President, as Commander in Chief, prescribing duties in such general terms as to call for their collection upon goods coming from the United States. We have an order not limited in point of its duration, but expressly by its own terms designed to be and remain in force until duly modified, suspended, or revoked. The exchange of the ratifications occurred the next day, April 11. We now know that from the moment of the exchange of the ratifications the President's power, as Commander in Chief, to impose duties in the Philippine Islands ceased and determined there, as it had ceased and determined, by the decision of this court, in Porto Rico, at least so far as duties upon importations from the United States were concerned. But the treaty did not modify, it did not suspend, it did not revoke the military order. The President still supposed that he had the authority to continue in force this order, which, as I have said, by its terms required the collection of duties upon imports from the United States. It is not too much to say that the question at that time was doubtful, because, if the opinion of four justices (instead of five) of this court had prevailed in the first Dooley case, he would have been

right in his belief that his authority as Commander in Chief continued. I do not speak of this for the purpose of throwing in the least degree any doubt upon the decision in that case, to which I yield implicitly, but only for the purpose of showing how doubtful the question was then to a man who, in the face of the world, had to assume the great responsibility of the government of the Philippine Islands, which was upon his shoulders. But whatever the President's power, his subordinates continued to obey his orders—to collect the duties. They interpreted—as our friends can not interpret to-day—they interpreted the order as the President had, as the Secretary of War had, as requiring the collection of duties upon goods coming from the United States. And they were collected in accordance with the order; unlawfully collected, we know now, but collected in accordance with the order, and in accordance with no other authority under the shining sun. Such was the order before these military subordinates. They had not the delicate duty to inquire as to its constitutionality and legal foundation, nor to solve the doubtful questions of law which were raised by the exchange of the ratifications of the treaty. Theirs not to reason why—theirs but to obey the plain terms of the order which imposed the collection of duties upon every article of merchandise as it entered the ports in the possession of the United States in the Philippine Islands. If your Honors please, a man may obey an unlawful order and still be acting in accordance with that order even though it be given with-

out authority. The proper way to determine whether a man or set of men are acting in accordance with an order is to compare their conduct with the order itself, and not by an inquiry as to whether the order rests upon any legal foundation. The amendments to this order, which are cited in our brief, show that it was treated as an existing, continuing, and operating order, and as requiring the collection of duties upon goods coming from the United States. I shall mention only such of those amendments as seem of peculiar significance in this connection.

On April 10, 1899, the Acting Secretary of War issued an order that, by direction of the President, a paragraph should be added to the "Customs Tariff and Regulations for the Philippine Islands," which was a part of the original order. This paragraph designated Manila as the chief customs port of the Philippine Islands, and two other places as subports. As this was but a day before the exchange of the ratifications (which it is fair to presume had already been arranged to occur the following day), it is inconceivable to suppose that the President would have been amending an order which he had made as Commander in Chief if he had not supposed that that order would have continued in effect for more than twenty-four hours. Knowing as he did that duties on importations from the United States had been collected under the order, it is inconceivable that he should not have amended the order in that respect if he had not intended that the collection should continue. Again, on May

3, 1899, less than a month after the exchange of the ratifications, this amendment itself was amended by an order signed by the President. The amendment is not important in itself, but it is important because of its use of the following language: "By virtue of the authority vested in me as Commander in Chief of the Army and Navy of the United States, I do hereby order and direct." Here is a clear recognition of the original order, as amended, which had been issued and amended by the Commander-in-Chief, and was clearly within his authority; and a clear assertion (mistaken though as it has turned out to be) of his continuing authority as Commander in Chief to modify, and as modified to keep in force, the original order which he had issued. Again, on October 23, 1899, the Commander in Chief issued an order republishing, for the information and guidance of all concerned, the original Customs Tariff and Regulations which had been promulgated by the commanding general on October 26, 1898, being the original order of the President of July 12, 1898. We have seen that the fair interpretation of the original order — the interpretation which it actually had and which was acquiesced in by all concerned—included the exaction of duties upon goods imported from the United States. But, after all, all these amendments to which I have referred prove no more than facts which must be conceded, namely, that after the exchange of the ratifications of the treaty the original order of the President was treated as existing

and operative, and as requiring that duties upon importations from the United States should be collected.

I desire again to call your Honors' attention for a moment to the letter of the Secretary of War to which I have just referred, to show more thoroughly how this interpretation was received and acquiesced in. This document shows that on April 20, 1899, certain American merchants trading with the Philippine Islands addressed a petition to the chamber of commerce, San Francisco. They asked in substance for "a lower tariff upon goods coming from the United States." This was some days after the exchange of the ratifications of the treaty. They did not in any way suggest that duties were not payable by the terms of the order, but simply asked the chamber of commerce to intervene for the purpose of securing "a low tariff upon productions special to the United States." This petition was referred to the custom-house officer in the Philippines, who reported upon it on September 28, 1899 (as appears upon page 8, Senate Document 171), saying that he was "unable to discover a single instance where merchandise coming from and manufactured in the United States is subject to a higher duty than Spain pays on the same merchandise." He further said:

> I do find that the classification of the present tariff is in some cases prejudicial to the profitable importation of some articles which are largely produced in the United States. These prejudicial classifications are being remedied in so far as the collector of the customs has the power to act.

And General Otis made the following indorsement, under date of October 7, 1899 (page 9 of Senate document), long after the treaty had been ratified:

> The same customs duties are exacted on all goods and merchandise introduced from the United States as from Spain or any other foreign country. For a short time after the capitulation of Manila, goods purchased in Spain before the war were admitted under the old Spanish preferential rates, but that has not been done for nearly a year past.

Now, the collection of these duties continued until the enactment of the Philippine Commission tariff, to which I shall refer only briefly. It is not primarily important what the Philippine Commission tariff was. It is important simply to show the continuity of purpose. Spain had always imposed a tariff upon goods coming into the Philippine Islands. The United States had always imposed a tariff upon goods coming into the Philippines. The same Spanish tariff has existed practically since the Spanish occupation down to this moment. And yet, to judge from my friend's language this morning, one would suppose that there had been an act of guilty usurpation in demanding from these merchants the duties which they willingly paid and which they had always paid. They are entitled, may it please your Honors, to that which the law gives them—they are entitled to their pound of flesh, but they are not entitled to one drop of blood. And if I ever felt justified in resisting by every means at my command an unrighteous claim against the people of

the Philippine Islands, I feel justified in doing so to-day. I do not ask your Honors to go one step beyond the law, but I ask for the Government of the United States that attention to all its great public acts, that fair and reasonable interpretation of the language of its laws, of its President and of its Congress, to which every litigant before any court is always entitled.

The Phillippine Commission was constituted with Judge Taft as president, and, under date of April 7, 1900, in a letter to the Secretary of War, the President conferred upon them full legislative powers, including the power to make a tariff. The President appointed them his military subordinates, though they were but civilians. There was no other conceivable authority under which he had the right to appoint Judge Taft and his associate Phillippine Commissioners, except his authority as Commander in Chief of the Army and Navy of the United States. The whole tenor of the instructions to these Commissioners shows that they were understood to be military subordinates. They were practically the agents of the military power at that time. They were made to report to the War Department and all the laws which they should enact were enacted by the authority of the President of the United States. It would have been technically more exact if the expression had been "by the authority of the Commander in Chief of the Army and Navy of the United States," because, as I have said, it was only as Commander in Chief that President McKinley had any right to appoint the Commission or to confer any

powers upon it. They proceeded to the Philippines and enacted a tariff which was put into effect by an order to which I shall allude, because it shows that the original tariff now in dispute was then for the first time revoked. On July 3, 1901, this order was issued by the War Department:

JULY 3, 1901.

> By order of the President, the following statute proposed by you for the revision and amendment of the law relating to duties on imports and exports of the Philippine Archipelago, and the tonnage duties and wharf charges therein, is approved and amended, and you are authorized to enact and promulgate the same.

The statute referred to in this order by its own terms went into effect on the 15th of the following November. So that, upon July 3, 1901, the President, acting through his Secretary of War, revoked, as of the 15th of the following November, the order which he had previously put in force, an order which by its terms was to be and remain in force until suspended, modified, or revoked. Finally, Congress itself enacted, on March 8, 1902, a tariff for the Philippine Islands, which was, in substance, the tariff of the order of the President and of the Philippine Commission. In passing, I think I ought to say something about the Spooner amendment, which is contained in the army appropriation act of March 2, 1901. It conferred upon the President "all military, civil, and judicial powers necessary to govern the Philippine Islands." That is, all the powers of government were, by Con-

gressional action from that day, invested in the President of the United States, with authority and discretion to exercise them as he chose. In pursuance of this authority, he sent a cablegram at once upon the passage of this act, saying that he would continue the existing arrangement in the Philippine Islands. The existing arrangement included the tariff law, if it included anything. So that after March 2, 1901, the date of the approval of the Spooner amendment, the President had the right to keep in force such laws as he chose to enact, including the whole tariff contained in the order of July, 1898. His right from the date of the Spooner amendment to enact or adopt such a tariff as he chose is clear under a decision of this court. Your Honors have sustained a conviction under a libel act enacted by that Commission in pursuance of the authority conferred upon it by the Spooner amendment. The same reasoning which sustains the authority of the President through his Commission to enact a libel act sustains his own authority to enact or adopt a tariff act.

When Congress convened in December, 1901, this court had rendered some important decisions upon fundamental questions of constitutional law, and laid down safe guides for the action of the legislative branch of the Government. Congress is presumed to have known and understood those decisions. In this case the presumption is justified by the fact, for I believe that no cases have been more attentively studied by public men than the decisions of your Honors in the so-called "Insular cases." It is important to state

exactly what those principles before the Congress were. On May 27, 1901, your Honors decided a group of cases which established the following principles:

First. By necessary implication, from the reasoning of all the justices, goods imported into the United States from our new possessions prior to the exchange of the ratifications of the treaty of peace were dutiable under the Dingley act.

Second. The Congress, after the exchange of the ratifications of the treaty, had the constitutional power to enact a law imposing duties upon goods coming from our new possessions into the United States.

Mr. Justice HARLAN. Does the reasoning of all the judges lead to that?

The ATTORNEY-GENERAL. No, sir; that decision was by a majority of the court.

Third. The President, by virtue of the authority vested in him as Commander in Chief, had the right to exact such duties as he chose to impose upon goods coming from the United States into our new possessions after they were occupied by our military forces and prior to the exchange of the ratifications of the treaty of peace. This by a unanimous court.

Fourth. After the exchange of the ratifications of the treaty of peace, and before the action of Congress, the President, as Commander in Chief, had no authority to impose duties upon goods coming from the United States into Porto Rico.

From the moment that these decisions were announced, it became doubtful whether the President

had the right to exact duties upon goods coming into the Philippines, at least from the United States, as he was doing. In order to avoid the effect of the decision in the Dooley case, which dealt with importations into Porto Rico from the United States, it became necessary to find some valid distinction between the two cases. The only possible distinction was suggested in a dispatch from Mr. Root to Governor Taft, at Manila, on June 8, 1901, in which he stated, after setting forth the effect of the May decisions of this court, that the question of the President's power to impose duties in the Philippines was not decided by the court, and said "The most obvious distinction between the status of Porto Rico and the Philippines after the cession" is that in the latter "a state of war has continued." He says: "The President has determined to continue to impose duties as heretofore." Here is a distinct declaration, through his Secretary of War, that he had imposed duties by this order, that he understood that he was then imposing them, and that he intended to continue to impose the duties as theretofore.

On December 2, 1901, two decisions established the following principles and threw further light on the situation:

First. The Congress, after the exchange of the ratifications of the treaty, had the constitutional power to enact a law imposing duties upon goods imported into our new possessions from the United States.

Second. Goods coming into the United States from the Philippine Islands, after the exchange of the ratifi-

cations of the treaty and before action by Congress, are not dutiable under the Dingley law, the flagrancy of the insurrection in the Philippine Islands being held, with respect to such importations, not to constitute a distinction between the case of those islands and that of Porto Rico.

Now, it is perfectly obvious that this court, by the decisions I have cited, had settled every great question regarding the trade between the United States and its new possessions, save one; and that one is presented in part by the case at bar. Concisely put, that question is: What was the power of the President as Commander in Chief to exact duties upon goods coming into the Philippines, and especially upon goods coming from the United States, between the date of the exchange of the ratifications of the treaty and the date of the tariff legislation by Congress? There was no other possible aspect of the trade relations between the Philippine Islands and the United States that had not been finally settled and clearly determined by this court. There was strong reason to believe, when the December opinions were announced, that the decision in this case would be that which your Honors have rendered and declined to reopen, namely, that the Philippine situation was ruled by the Dooley case and that of the Fourteen Diamond Rings, and that the war power of the President to exact duties upon goods coming from the United States had ceased in the Philippines, as it had ceased in Porto Rico. There was an impending danger that the income de-

rived from the imposition and collection of duties upon goods from the United States, which had been absolutely essential to the continued life of the government of the Philippine Islands, might be taken away. But however probable that decision might be, the contention was still open that a different rule should be applied to the two possessions. It might still be contended that the flagrancy of the insurrection in the Philippines, while it could not properly affect the interpretation of the Dingley Act, might affect the continued existence of the war power of the President in the territory where that insurrection was raging. That contention was made by the Solicitor-General and confidently relied upon. It was the basis of the decision of the court below. It has now been finally disposed of adversely by the judgment of this whole court. When, therefore, the Congress met in December, it was clear that all the duties collected in the Philippines before the exchange of the ratifications of the treaty were collected legally, as would be all duties which might be collected thereafter under an act of Congress; and the only other duties the legality of the collection of which was the least doubtful were those exacted in the Philippines under the orders of the President in the intervening period. The total of those duties was large. They were necessary to the life of the Philippine government. They had never been covered into the Treasury of the United States, but had been expended for the government of the Philippine Islands. Congress, in the light of these facts, acted deliberately. Governor

Taft came from the Philippines. Each House conducted exhaustive investigations of the affairs of those islands, and the first pertinent fruit of those investigations was the enactment of the tariff act of March 8, 1902, which imposed duties in the Philippines and in this country upon the mutual trade. Its significance here is only that it continued down to this moment the policy of collecting duties in the Philippine Islands upon imports from the United States, substantially the same as those which has been collected upon the same traffic from November 10, 1898: First, under the military orders of the President, and, second, under the action of the Philippine Commission, resting for its authority upon the war power of the President, aided and supplemented as far as that could be done constitutionally by the Spooner amendment. In the meantime, the right of the President to collect duties, by virtue of his authority as Commander in Chief, upon goods coming from the United States had been challenged in the courts by the very cases which are now at the bar of this court, which were begun in January and March, 1902. Let me again emphasize the situation which had been created by the declarations of this court. Every conceivable question had been settled finally beyond doubt, except the one question of the authority of the President to collect, by virtue of his war power, duties upon goods coming into the Philippines. That question alone was open to dispute, and the dispute, so far as goods coming from the United States were concerned, actually had been begun by the bringing of these suits. And, as I have said before,

the question was indeed a grave one, because from the imposition of those duties income absolutely essential to the government of the Philippine Islands had been derived.

Mr. Justice HARLAN. You say that all the income essential to the government of those islands had been collected on goods from the United States? Wasn't the statement you quoted from Secretary Taft rather that if the duty was not allowed to be collected in that way the goods would come by way of the United States and that the great preponderance thus far collected had been upon goods coming elsewhere than from the United States?

The ATTORNEY-GENERAL. That is what I meant to say. I understand that the larger amount of duties were collected upon goods coming from foreign countries. The point is that if these duties on United States goods had not been imposed there would not have been sufficient revenue to support the government of the islands. The only revenue was from customs duties, and if United States goods had been free all importations would have been from the United States and the revenue would have ceased. It is, however, not safe to take the statistics of the Treasury, because many of the importations from the United States went to Hongkong and were entered at Manila as from Hongkong, so that the importations upon which a refund of these duties may be claimed are by no means shown by the statistics of the Treasury.

Now, having all these things in view, Congress enacted the law of July 1, 1902.

Mr. Justice DAY. You speak of the law passed in March, 1902?

The ATTORNEY-GENERAL. Yes, sir; the tariff law of March 8, 1902, which adopted the Philippine Commission tariff, which in turn had adopted the tariff under the military order, which in turn had adopted the old Spanish tariff law.

Mr. Justice WHITE. That was the law under which the ratification is claimed to arise?

The ATTORNEY-GENERAL. No, sir; that was the act of July.

Mr. Justice DAY. There is no language in the act of March, 1902, ratifying the collection of duties?

The ATTORNEY-GENERAL. It seems that if it was ratified at all it was by the act of July, 1902.

The other acts simply show a recognition of what the President was doing, but I will not contend until we reach the act of July 1st, 1902, that there was any ratification by Congress. But on that date Congress passed a law to ratify something. What did it ratify? We contend that it ratified that which was doubtful or illegal and needed ratification; and that it was not designed to ratify, nor did it ratify, that which was legal and needed no ratification. On the other hand, our friends claim—and they state the claim in the clearest way on page 37 of the brief of Mr. Carlisle and Mr. Ward, in this language:

> * * * its intention was that only such action of the President as this court had decided, or might thereafter decide, that he had the power to take, and only such actions of the

> subordinates as were within the terms of the order, were ratified.

That is to say, that Congress intended to ratify the actions of the President which the court had decided were legal or might thereafter decide were legal. My friend nods assent to that proposition.

Mr. COUDERT. I don't assent.

The ATTORNEY-GENERAL. And I understand it to be the claim in all the briefs that Congress, by the act of 1902, ratified the action of the President, taken by virtue of his lawful authority as Commander in Chief.

Mr. CARLISLE. We contend that Congress, by the passage of this act, proceeded to ratify nothing except what had been done in accordance with this order, and the court has decided that this action was not in accordance with the order.

The ATTORNEY-GENERAL. I still adhere to your text. I will read the language again:

> * * * its intention was that only such action of the President as this court had decided, or might thereafter decide, that he had the power to take, and only such actions of the subordinates as were within the terms of the order, were ratified.

Only action of the President which needed no ratification should be ratified? That is a reflection. It is a charge of the grossest incapacity on the part of Congress to appreciate and deal with the situation. I know that your Honors will approach this question of ratification in the light of the conditions which the history

of the times has shown to exist. Your Honors will not undertake to minimize or destroy the plain meaning of the act of Congress by any subtle play upon words or any strained interpretation of their effect, as is submitted to your Honors at the bar of this court. But, on the other hand, will give to them their natural and fair meaning and construe this act in a way that will accomplish something instead of nothing.

Mr. COUDERT. How about the collection of duties on goods coming from foreign countries—is that a very doubtful question?

The ATTORNEY-GENERAL. Yes, I am coming to that; that is the second proposition. The ratification is attacked in two ways. In the first place, it is claimed that the act ratified only that which was legal, and then another claim is made about it which I will approach in a moment. I will approach it now.

The suggestion that this act ratified duties upon goods coming from foreign countries other than the United States appears frequently in their briefs. It appears more clearly in the later briefs, and in the oral argument it is much relied upon. Our friends instinctively shrink, as Mr. Carlisle just now shrunk from his own language in his own brief, from an interpretation of this statute which would make it ratify only that which needed no ratification. He instinctively shrinks from such interpretation. He realizes that your Honors would be reluctant to adopt it, unless the very words of the statute required. So he puts forward the suggestion that the proposition was to ratify

the collection of duties upon goods coming from other countries than the United States. Now, that is a coherent thought; that is intelligible action for Congress to take. If Congress had taken action of that kind, it would not have exposed itself to the imputation to which it would have been exposed if it had ratified only that which was legal.

Mr. Justice HARLAN. When the act of July 1, 1902, was passed, had the court passed upon the validity of the President's order?

The ATTORNEY-GENERAL. No, sir; not as applied to the Philippine Islands. The court had held that a similar order, so far as it directed the collection of duties upon goods coming from the United States into Porto Rico, was without lawful authority after the exchange of the ratifications of the treaty. The court had also held that the existence of the insurrection in the Philippine Islands did not affect the interpretation of the Dingley Act, and that therefore, as with the exchange of the ratifications of the treaty the Philippine Islands ceased to be foreign territory within the meaning of the Dingley Act, duties were no longer collectible upon goods coming from the Philippine Islands, because the Dingley Act imposed duties only upon articles imported from foreign countries. But it was not until this case was decided that the court held—and now declines to reopen the question—that the existence of the insurrection did not cause the war power of the President to continue in the disturbed territory. Therefore, until this case was decided, it was not certain whether or not the President's war power continned in those islands.

I agree with my friends on the other side that the President's right to exact duties upon goods coming from foreign countries into the Philippine Islands after the exchange of the ratifications of the treaty is doubtful. I know there are intimations in the opinion of the court that the President had the right to continue to exact duties upon goods coming from foreign countries, although not upon goods coming from the United States. But they are no more than intimations. The question has not been distinctly presented to this court. And if it is held here, as it was held in the first Dooley case, that the President's power as Commander in Chief to impose duties upon goods coming from the United States had ceased because both the spirit and the letter of our laws forbade its exercise it will be but another way of expressing the same thing that was expressed in *Cross v. Harrison* (16 How., 164, 201), that the tariff law of the United States instantly went into effect in the territory acquired by the treaty of cession.

Mr. Justice HARLAN. Do you make a distinction between the power of the President as Commander in Chief to impose duties upon goods coming from the United States into the Philippines and on goods coming from the Philippines into the United States?

The ATTORNEY-GENERAL. I would if I were allowed to. But the decisions of this court, including that part of the decision in the case at bar not open for argument, it seems to me, do not permit me to do so, and I yield to them. There is nothing I should like better

than to argue that there can be no real correlation between the President's power to impose duties in the Philippines and the Congressional power to impose duties in the United States, any more than there can be a correlation between the power of Great Britain and that of this country. I believe it to be doubtful, under this decision, whether every merchant who paid duties upon goods coming into the Philippine Islands, after the exchange of the ratifications of the treaty, is not entitled to a refund of them, even if the goods came from foreign countries.

Mr. Justice BROWN. Might there not be a distinction between cases where the action had already been begun and the rights of the parties fixed at the date of the action, as was the situation in the De Lima case, and also in this case, and cases where no action has been brought to recover back?

The ATTORNEY-GENERAL. There may be some distinction, but the question belongs to the Solicitor-General's branch of this case, and I prefer, with your Honors' permission, to let him answer it.

The question as to the right of the President to exact duties upon goods coming from foreign countries into the Philippines is doubtful, under the decision of this court. It may be brought here if this decision stands. In some of its aspects it is already on the way here, and when it gets here the counsel who will then argue the case—if the Government should set up that this act of 1902 ratified the collection of these duties—would say, as they say here: First, it did not ratify

the collection of those duties because it was intended to ratify only such acts as were lawful; and, second, they would say, as they say here, that Congress had no constitutional power to ratify the collection of duties unlawfully imposed and collected.

(RECESS.)

I think I have shown to your Honors, what is apparent without my showing it, that when Congress enacted this ratification statute that body had before it every aspect of the tariff situation with respect to the Philippine Islands, and realized that every question had been settled by this court save one—the power of the President of the United States, as Commander in Chief of the Army and Navy, in the interval between the exchange of the ratifications of the treaty and the passage of the tariff act, to impose duties upon goods imported into the Philippine Islands, and especially to impose duties upon goods coming into the Philippines from the United States. With that situation clearly before it, Congress enacted the ratification statute upon which we rely. I shall now submit to the court the interpretation which I think it ought to have. The second section of that act (found on page 14 of my brief) provides: "That the action of the President of the United States heretofore taken by virtue of the authority vested in him as Commander in Chief of the Army and Navy, as set forth in his order of July twelfth, eighteen hundred and ninety-eight, * * * together with the subsequent amendments of said order, are hereby approved, ratified, and confirmed,

* * * *." The interpretation which I put upon this language is, that it is a ratification of the action actually "taken by the President by virtue of his authority as Commander in Chief." Congress undoubtedly did not intend to ratify anything beyond the action which was taken under that order and its amendments. It seems to me unimportant that the President was mistaken as to the extent of his authority. This language is a description of his action, not a limitation upon the action which Congress intended to ratify. It should be construed as if it read: "The action of the President heretofore actually taken by him in issuing the order of July 12 and its amendments is approved, ratified, and confirmed." On the other hand, our friends contend that that part of the statute should be construed as if it read, "The action of the President of the United States heretofore legally taken by virtue of his authority as Commander in Chief." Moreover, the statute approved the "action of the authorities of the government of the Philippine Islands, *taken in accordance with the provisions of said order and subsequent amendments.*" I think I have already shown that according to the ordinary use of language, the action taken in the collection of duties upon goods coming from the United States was taken in accordance with the order—was taken in obedience to the order; and that it is none the less in obedience to the order, none the less in accordance with the order, because the order itself was without lawful foundation. The plain purpose of the ratifying statute was to supply the authority which

was wanting at the time of the action itself. It is our contention that the facts show that this action was taken in strict obedience to and in strict accordance with the provisions and very terms of the order as properly construed. Suppose an officer had declined to obey the order to collect the duties upon importations from the United States and had said, "I doubt the constitutional authority of the President to issue that order." Suppose he had been charged before a court-martial with disobedience of orders, and convicted, and in some manner that conviction was before your Honors for review, would not your Honors say to the officer, "It was your duty to obey the order and not question the authority under which it was issued."

On the other hand, our friends suggest two alternative interpretations of this statute. Since adjournment I have refreshed my mind upon what I understand to be their position. I understand their first and main contention to be the contention that was much dwelt upon by Mr. Fuller in his opening speech, and which appears on page 37 of Mr. Carlisle's brief. There it is said that Congress used the words "'the action of the authorities of the government of the Philippine Islands *taken in accordance with the provisions* of said order and subsequent amendments,' with the intention that full force should be given to their natural meaning and in order to indicate beyond all question that it was only such action of the President as this court had decided, or might thereafter decide, that he had the power to take and only such actions of the subordinates as were

within the terms of the order, were ratified. Had Congress intended to ratify that which the court had held or might thereafter hold to be illegal and done without authority of law, it would have said so in unmistakable terms." Now I understand them, then, to adopt the position, that Congress searched carefully and industriously the decisions of this court, and the facts to which they applied, found just one principle upon which this court had unanimously agreed, namely, that the collection of duties upon imports from the United States before the exchange of the ratifications of the treaty was lawful, and ratified that collection and nothing else. It seems to me that the statement of that proposition is its own answer, and that the court would be reluctant to interpret the statute in a manner which would constitute such a reflection upon the intelligence of a coordinate branch of this Government. But, shrinking from the consequences of that interpretation, my friends now put forward, and with great emphasis, another interpretation, namely, that this statute ratified the collection of duties upon imports from countries which were foreign to the Philippine Islands after the exchange of the ratifications of the treaty. They say that the right of the President to exact such duties was doubtful. I agree that it was doubtful. I think that it was more than doubtful. I think it would be difficult to resist the claim that, if the spirit and letter of our tariff laws instantly applied to the Philippine Islands upon the exchange of the ratifications of the treaty, all duties collected under

some other tariff were illegally exacted. I think, therefore, that if Congress had desired to close up that part of the question, it would have exhibited an intelligent view of the situation and enacted appropriate legislation. But Congress actually did nothing of the kind. It is an explanation which does not explain. It is an interpretation which does not interpret. It is like an unsuccessful attempt to prove an alibi in the criminal law which always justly is regarded as a confession of guilt. The very fact that such an interpretation is an afterthought is equivalent to a confession that the first claim, that the statute ratified nothing except that which was legal, is untenable. And since that interpretation finds no foundation or color in any word of the ratifying act it seems to me their case is lost. Congress does not ratify any part of the duties collected under the order of the President. It ratifies all of the duties that were collected under the order of the President. It makes no distinction between duties, whether they were levied upon goods coming from Spain, England, or the United States. It "ratifies the action of the President as set forth in his order of July 12, 1898, and the amendments thereto;" and I believe I have shown to your Honors that that order required, by its very terms, the collection of duties upon imports from the United States, and by its very terms was to be continued until suspended, modified, or revoked.

Mr. Justice HARLAN. Was there any discussion in Congress when the act was passed?

The ATTORNEY-GENERAL. I have been unable to find it.

Mr. Justice HARLAN. Was there any discussion otherwise of a public character as to the right of the President to issue that order?

The ATTORNEY-GENERAL. I suppose there must have been very much discussion of that question, because at the time it was very clear that it was doubtful—if I may use the expression that way—whether the President did have any such right, and I have no doubt it was fully discussed. But as I must concede now that that exercise of authority was illegal, I have not thought it necessary to proceed with the argument of it. I can show the authorship of the statute, but will not do so unless I am invited.

It is urged here that there is an inconsistency between the action of Congress with respect to Porto Rico and the action which we claim Congress took with regard to the enactment of this statute. Of course, there is an inconsistency. Congress intended to be inconsistent in dealing with Porto Rico and the Philippine Islands. The whole country regarded the island of Porto Rico as finally a part of our territory. Congress intended, after the imposition of a temporary tax upon the traffic between Porto Rico and the United States, to make it absolutely free between the two territories. Congress, on March 8, 1902, at the very time it enacted the tariff law imposing duties upon traffic between the Philippine Islands and this country, already had provided by its own action that six days before the traffic between Porto Rico and the United States should be free of duty. It was an inconsistency which

was designed by Congress. It was an inconsistency which was understood by the people, because it has not yet been determined finally and irrevocably whether we shall hold the Philippine Islands permanently under our dominion or whether, after such period as is necessary to fit them for their own self-government, they will be given independence.

I hesitate to say anything about the consequences of this decision. I only say it for the purpose of inviting your Honors' attentive consideration to all the public documents which show the history of this transaction, as well as to the enactments of Congress, with a view to understanding the governmental policy which has prevailed from the moment our troops landed upon Philippine soil. It has been finally and irrevocably held that the President unlawfully exercised his authority as Commander in Chief in the collection of the duties in this case, and it will be difficult to resist the conclusion that his action was equally unlawful in imposing duties upon imports from other countries. And if it should be held—a question still open for your Honors' consideration—that this act of 1902 did not ratify the action of the President with respect to importations from the United States, I know of no method of interpreting the English language by which your Honors can hold that the exaction of duties upon goods imported from countries other than the United States was ratified. And I believe that it is as certain as that the night follows the day that if the imposition of duties upon goods imported from

the United States is illegal and was not ratified by this statute, that at least the duties collected upon goods imported from Spain, which by the treaty itself is entitled to equality of treatment with the United States in that respect, were illegally exacted. I know of no possible way by which this act, if it is held not to ratify the collection of duties upon imports from the United States, can be given an interpretation which would ratify the collection of duties upon imports from Spain. And I beg your Honors to remember that against the ratification of this statute for any purpose our friends urged that Congress under the Constitution was without power. They urged, in the first place, and they dwelt upon this at much length, that the proper interpretation of the words of this act is that they ratified nothing except that which the President had the lawful authority to do without ratification.

I intend, if your Honors please, to leave to the Solicitor-General the discussion of the power of Congress to enact the statute which has the effect that we claim this statute has, but, at his suggestion, I desire to say one word, and one word only, upon that.

This court has held, in *Dorr* v. *The United States* (195 U. S., 138), that by the Spooner amendment authority was conferred upon the President through such agencies as he might select to enact legislation for the Philippine Islands, and impliedly has held that in his dealing with that authority the constitutional provision which separates the executive, judicial, and legislative branches of the Government is not applicable.

For it has held, and without dissent upon this point at least, that a conviction for libel could be sustained under a statute enacted by the Philippine Commission, the military subordinates of the Commander in Chief, defining and describing what constitutes a libel in the Philippine Islands. If that Commission, under the authority of that act, could enact a libel law, it could enact a tariff law. It follows, then, that upon the 11th day of April, 1899, the date of the exchange of the ratifications of the treaty, Congress could have passed the Spooner amendment, and by that amendment the President, exercising the legislative power, could have put in force a tariff exactly like the one which he was then keeping in force. Congress, then, having the power at that time and continuing to have the power down to July 1, 1902, could have authorized at the time they were done these acts which the court has held illegal. Our position is that Congress could ratify on July 1, 1902, that which they could have authorized on July 11, 1898, but which without the authority of Congress was unlawful.

O

ORDER

OF THE

MILITARY GOVERNOR OF THE PHILIPPINES,

OCTOBER 26, 1898,

WITH

CUSTOMS TARIFF AND REGULATIONS ENFORCED THEREUNDER.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1906.

[This is a reprint of the order of October 26, 1898, which the Attorney-General especially referred to at the argument of the Philippine tariff case, containing on page 29 the provision that the duty, tonnage tax, wharf charges, etc., shall be collected in uniform manner regardless of the country of the origin or exportation of merchandise. See also the final paragraph, No. 372, p. 40.]

OFFICE OF THE MILITARY GOVERNOR IN THE PHILIPPINE ISLANDS.

Manila, P. I., October 26, 1898.

General Orders, No. 10.

Referring to General Orders of the 29th ultimo from this office, wherein is recited the necessity of a careful revision of the "Customs Tariff and Regulations" prescribed by the United States Government for such portion of the Philippine Islands as may be under United States control, in order to satisfy United States Government interests and prevailing business conditions; and proclaiming, for such reasons, the postponement of the practical application of those tariff regulations until November 10th, next; it is hereby ordered that the same, amended and revised, and as now fully contained in the following printed schedule, be put in force from and after the date proclaimed, viz: November 10, 1898.

Upon the occupation of any ports or places in the Philippine Islands by the forces of the United States the foregoing order will be proclaimed and enforced.

By Command of Major-General Otis:

THOMAS H. BARRY,
Assistant Adjutant-General.

REGULATIONS FOR THE GUIDANCE OF OFFICERS CONCERNED IN THE COLLECTION OF DUTIES ON IMPORTS AND EXPORTS, TAXES AND OTHER CHARGES AND EXACTIONS TO BE LEVIED AND COLLECTED AS A MILITARY CONTRIBUTION AT PORTS AND PLACES IN THE POSSESSION OF OR UNDER THE CONTROL OF THE FORCES OF THE UNITED STATES, IN THE PHILIPPINE ISLANDS.

ENTRANCE AND CLEARANCE OF VESSELS.

1. Every vessel shall, on arrival, be placed under military guard until duly discharged. Passengers with no dutiable property in their possession may be permitted to land without detention.

If, upon the unlading of any cargo, there shall be found goods, wares, or merchandise not duly declared on the manifest, such articles in excess shall be required to pay additional duties of 25 per cent. on the regular duties. Should any packages or articles named on the manifest be missing on the arrival of the vessel, the latter shall pay a penalty of 1 peso per ton measurement, unless such deficiency shall be satisfactorily explained or accounted for.

2. Within twenty-four hours after the arrival of any vessel the master must, under a penalty for failure of 1 peso per ton registry measurement, produce to the proper officer a manifest of her cargo, with the marks, numbers and description of the packages and the names of the respective consignees, which manifests, if the vessel be from a port in the United States, shall be certified by the collector of the port of sailing. If the vessel be from any other than a United States port, her manifest must be certified by the United States consul or com-

mercial agent at such port: if there be no United States consul or commercial agent at such port, then by the consul of any nation at peace with the United States; and the register of the vessel shall, upon her arrival in the Philippines, be deposited with the consul of the nation to which she may belong, if any there be, otherwise with the commandant at the port, until the master shall have paid such tonnage taxes and other port charges as may be due under these regulations.

3. No vessel shall be allowed to clear for another port until all her cargo has been landed or accounted for. All goods not duly entered within ten days after their arrival in port shall be landed and stored, the expense thereof to be charged against the goods.

4. Prior to the departure of any vessel from any of the ports herein designated, the master shall deposit with the proper officer a manifest, in duplicate, of the outward cargo of such vessel, specifying marks and numbers of packages, a description of their contents, with names of shippers and consignees, with a statement of the value of each separate lot; also names of passengers and their destination. A clearance will then be granted to the vessel. No prohibited or contraband goods shall be exported.

LIGHT DUES.

5. At all ports or places in the Philippines which may be in possession or under administrative control of the land or naval forces of the United States, there shall be levied the following navigation and port charge:

	Per net ton.
On each entry of a vessel from a port or place, except from another port or place in the Philippines	$0.10

6. The following shall be exempt from light dues:

A vessel belonging to or employed in the service of the Government of the United States; or a vessel of a neu-

tral foreign government not engaged in trade; or a vessel in distress: or a yacht belonging to an organized yacht club of the United States or of a neutral foreign nation.

7. The tonnage of a vessel shall be the net or register tonnage expressed in her national certificate of registry.

ENTRY OF MERCHANDISE.

8. The consignee named in the bill of lading, or the person to whom such consignee shall by endorsement, have assigned the bill of lading, shall present to the officer, duly designated for that purpose, his declaration in triplicate, an invoice describing the goods, showing their character, quantity, the name of the importer and of the vessel of importation, the place whence the goods were imported, the date of their arrival at the port of destination, the marks and numbers of the packages, the nature and quantity of their contents, and their value. The declaration shall be signed by the importer, who must certify to the truth of all the statements contained therein.

9. After the packages and contents have been duly compared with the declaration, and found to agree therewith, the duty due thereon will be computed on the face of the entry, and, after the payment of the proper duties and charges, an order for the delivery of the packages and contents will be issued by the proper officer.

10. Any objections to the assessment of duty must be filed by the importer before the payment by him of the same, and no refund of duty will be made thereafter.

11. Goods found to be fraudulently invoiced, either as to character or quantity, and all goods attempted to be introduced without permit, shall be confiscated.

12. No delivery of imported merchandise shall be made to the importer unless he shall have duly paid the duties assessed thereon.

13. Any goods, wares, or merchandise not duly en-

tered for payment of duty within ninety days after importation shall be sold at auction by order of the commandant after five days' public notice conspicuously posted at the port. The proceeds of such sale will be kept for ten days, subject to the demand of the importer after deduction of the proper duties on the goods and all expenses of storage and sale. All merchandise remaining in the "godowns" of the custom house longer than fifteen days shall be charged with storage at the rate of 5 pesos per ton per month by measurement or dead weight, as shown by bill of lading.

14. All seized and confiscated merchandise will be sold in like manner, and the proceeds, after deduction of expenses, will be turned over to the officer duly designated for that purpose.

15. Merchandise originally destined for some port or place in the Philippines, not in the possession of the United States forces, may be entered at one of the designated ports. Vessels may likewise enter, although originally cleared for a port in the Philippines not in possession of the United States.

WHARF CHARGES.

16. Goods of all kinds exported through ports of the Philippines declared open by the United States shall pay one peso per 1,000 kilograms gross, as a charge for wharfage, whatever be the port of destination or nationality of the exporting vessel.

17. Goods of all kinds imported into ports of the Philippines declared open by the United States, and destined for trans-shipment to other ports of the Philippines declared open by the United States, shall pay a charge for wharfage of one-half of one peso per 1,000 kilograms gross at the port of trans-shipment.

18. Merchandise imported, exported, or shipped in transit for the use of the Government of the United States, including coal, shall be exempt from wharf charges.

HARBOR AND COMMERCIAL IMPROVEMENT CHARGES.

19. In addition to customs duties and other exactions there shall be levied a charge of 8 per centum, on the value, as per schedule, of all merchandise, free or dutiable, imported into the Philippines, and 10 per cent. additional on the amount of the import duty; but merchandise imported or exported for the use of the Government of the United States, including coal, shall be exempt from this charge.

20. The officer duly designated for that purpose shall receive all customs duties, fees, and charges, and shall without delay pay the same over to such officer as shall be designated by the commanding general. Records shall be kept and accounts rendered of all money transactions, and receipts in duplicate shall be taken by the officer paying over such moneys, one copy to be retained by him as his official voucher and the other transmitted by mail with his accounts to the War Department, Washington, D. C.

21. Such public buildings as may be suitable for the purpose shall be used and occupied for the transaction of business and for the storage of imports.

22. All supplies and materials for the use of the Army and Navy of the United States shall, under suitable restrictions to be prescribed by the commanding general, be admitted without payment of duty.

RATES OF DUTY ON IMPORTS.

CLASS I.—STONES, EARTHS, MINERALS, GLASS AND GLASSWARE, AND CERAMIC PRODUCTS.

GROUP 1.—*Stones and earthern productions employed in building, arts and industry.*

		Pesos.
23. Marble, jasper and alabaster, in the rough or in dressed pieces, squared and prepared for taking the form	100 kilos	0.08

		Pesos.
24. Marble, jasper and alabaster, cut into squares, slabs, or steps of any dimension, polished or not	100 kilos	0.75
25. Marble, jasper and alabaster, worked up and chiseled into any object, polished or not, other than ornamental or articles of luxury	100 kilos	1.60
26. Other stones employed in building, arts and industry; also cement	100 kilos	.50

GROUP 2.—*Coal.*

27. Coal and coke (*a*)	ton of 1,000 kilos	0.50

GROUP 3.—*Schists, bitumen, and their derivations.*

28. Tar, pitch, asphalt, bitumen, and schists; also unrefined creosote (*b*)	100 kilos	0.09
29. Naphtha, vaseline, crude petroleum, natural and crude oils derived from schist (*b*)	100 kilos	4.00
30. Benzine, gasoline, petroleum, and other mineral oils, refined (*b*)	100 kilos	4.50

(*a*) Coal and coke shall be cleared in conformity to the weight indicated in the certificate issued to the master of the vessel by the consul at the port of shipment, proving the quantity received on board according to the charter party and the bills of lading, which documents the said consul shall demand to see for the purpose. In case of doubt the customs may verify the quantity.

(*b*) Crude oils derived from schist shall be understood to be those derived from the first distillation, distinguishable by their yellowish color and density of from 0.900° to 0.920°, or from 66 to 57½ of the centesimal areometer, equal to from 24.69° to 21.48° Cartier.

Petroleums having the following properties are considered as crude natural petroleums:

First. Those which, when distilled gradually and continuously in a glass apparatus at a temperature of 300° Centigrade, leave a residium exceeding 20 per cent of their primitive weight.

Second. When this residue in its turn leaves 1 per cent. at least of coke in proportion to the total weight of petroleum assayed.

Third. When, according to E. Granier's apparatus, they are found to be inflammable at a temperature lower than 16° Centigrade.

All petroleums and other mineral oils not possessing the above characteristics shall be considered as refined.

GROUP 4.—*Ores.*

		Pesos.
31. Ores	ton of 1,000 kilos	0.25

GROUP 5.—*Glass and glassware.*

32. Common or ordinary hollow glassware (*a*)	100 kilos	1.60
33. Crystal, and glass imitating it, also gilt or silvered in the interior (*b*)	100 kilos	6.00
34. Glass and crystal, in plates and sheets	100 kilos	3.00
35. Glass and crystal, silvered, and glasses for spectacles and watches	kilo	.05

GROUP 6.—*Pottery, earthenware and porcelain.*

36. Clay, in bricks, squares and tiles, for building purposes, furnaces, etc. (*c*)	100 kilos	0.02
37. Clay, in large and small paving tiles; tiles of colored faience, varnished tiles and piping (*d*)	100 kilos	.40
38. Faience and wares of fine clay (*e*)	do	6.00
39. Porcelain	do	10.00

(*a*) Are included in this number bottles, demijohns and flasks for oil, wine, drugs, perfumery and chemicals, provided they be not cut; and unpolished glass of more than 12 millimeters in thickness for roofs and pavements.

(*b*) Are also included in this number bottles, tumblers, glasses and other objects for table service, ornament and lighting, whether of crystal or white or colored glass, as well as beads.

(*c*) Only rough bricks, squares and tiles of baked earth or clay employed in the construction of walls, furnaces, etc., are to be included in this number.

(*d*) No. 37 includes tiles for pavements and small tiles for mosaic work, and also the articles for building contained in No. 36, when glazed, painted, enameled and made of washed or sifted earths.

(*e*) The articles of fine clay included in this number are dinner services, kitchen earthenware, flower vases, ornaments and the like.

CLASS II.—METALS, AND ALL MANUFACTURES IN WHICH A METAL ENTERS AS A PRINCIPAL ELEMENT.

GROUP 1.—*Gold, silver and platinum.*

		Pesos.
40.	Gold and silver in jewelry or plate, (*a*) even set with pearls or precious stones (*a*) ----------hectog	5.00
41.	Gold, silver or platinum worked into other objects (*b*, *c*)----------hectog	.50

GROUP 2.—*Iron and steel.* (*d*)

42.	Cast iron, in pigs, and old iron-----100 kilos		0.50
43.	Cast iron, in tubes of all kinds-----	do	.95
44.	Cast iron, in common manufactures-	do	1.50
45.	Cast iron, in fine manufactures; *i. e.*, those polished, enameled with a coating of porcelain, or with ornaments of other metals ----------100 kilos		3.50
46.	Wrought iron and steel rails-------	do	1.60
47.	Wrought iron and steel in sheets of a thickness of 6 millimeters or more, and bolts--- ----------100 kilos		1.80
48.	A. Wrought iron and steel in bars of any form, in sheets up to 6 millimeters in thickness; axles, tires, and springs for carriages; and hoop iron----------100 kilos		2.60

(*a*) In the classification of jewelry or ornaments will be included all small articles of luxury valuable on account of workmanship, whatever their denomination, and generally intended for the ornament of persons of both sexes.

(*b*) Utensils for domestic use, articles for church use and generally all large objects used for the ornamentation of houses are included in this number.

(*c*) In clearing finished articles, including jewelry and articles of gold, silver or platinum filled with mastic, a reasonable tare allowance shall be made for such mastic.

(*d*) Articles of malleable cast iron shall pay the duties stipulated for manufactures and articles of wrought iron.

		Pesos.
B. Wrought iron in rough bars (tochos) (*a*)	100 kilos	2.60
49. Wrought iron and steel, in large pieces, made of bar iron, or of bar or sheet iron secured together by means of rivets, destined for buildings, bridges, etc	100 kilos	3.20
50. Iron wire (*b*)	do	1.60
51. Iron nails and screws, even with brass heads	100 kilos	4.00
52. Wrought-iron pipes	do	2.60
53. Wire gauze, not further manufactured	100 kilos	6.00
54. Wares of wrought iron, not elsewhere mentioned, including those enameled with porcelain and those combined with other metals; also pipes covered with sheet brass	100 kilos	8.00
55. Unutilizable articles of iron	do	1.00
56. Tin plate	do	5.00
57. Tin-plate manufactures	do	8.00
58. Needles, pens, parts of clockwork, and other similar articles of iron or steel	kilo	1.65
59. Knives, carvers, razors and penknives	do	.40
60. Scissors of all kinds	do	.40
61. Side arms and detached pieces for the same	kilo	.40
62. Firearms, barrels and detached pieces for the same (*c*)	kilo	1.00

(*a*) By "iron in rough bars" (tochos) shall be understood rough wrought iron in a mass or prism, and round iron in any other form containing dross. Wrought iron containing dross has an unequal and rough surface. Wrought iron in a mass or prism, free from dross, will be subject to duty as iron in bars. In case of doubt, this iron shall be submitted for examination to the inspector of mines, who will determine its classification.

(*b*) Only round iron, the thickness of which does not exceed No. 1, English gauge, *i. e.*, 8 millimeters in diameter, shall be considered as wire.

(*c*) In order that pieces of firearms may pay according to this number, they must be shaped and bear file marks on the outer surface.

GROUP 3.—*Copper and its alloys.*

		Pesos.
63. Copper of first fusion, and old copper	100 kilos	2.00
64. Copper and brass in bars and ingots, and old brass	100 kilos	2.50
65. Copper and brass in sheets and nails, and copper wire	100 kilos	10.00
66. Copper and brass in tubes and large pieces not finished, such as bottoms of boilers, etc	100 kilos	10.00
67. Brass wire	do	10.00
68. Copper, brass, or bronze gauze, not worked	100 kilos	15.00
69. Bronze, unworked	do	2.00
70. Copper, bronze, or brass, worked, and all alloys of common metal in which copper enters, in hardware, even varnished	kilo	.25
71. Said metals and alloys, in gilt, silvered, or nickeled articles	kilo	.35

GROUP 4.—*Other metals.*

72. Tin in ingots	100 kilos	2.50
73. Zinc in bars, lumps, or pigs	do	1.20
74. Zinc in sheets, nails, and wire	do	5.00
75. Zinc in manufactured articles, even varnished	kilo	.25
76. All other metals and alloys not mentioned, in sheets, lumps, nails, tubes, etc	100 kilos	10.00
77. The same metals, manufactured, varnished or not	kilo	.20
78. The same metals, and zinc in gilt, silvered or nickeled wares	kilo	.30

CLASS III.—SUBSTANCES EMPLOYED IN PHARMACY, PERFUMERY AND CHEMICAL INDUSTRIES.

GROUP 1.—*Simple drugs.*

79. Cocoanut and palm oil, and other heavy oils	100 kilos	.20

		Pesos.
80. Other vegetable oils, except olive oil	100 kilos	4.60
81. Dyewoods and tannery bark	do	.02
82. Madder or rubian	do	4.00
83. Rape, flax and other oleaginous seeds, including copra or cocoanut	100 kilos	.04
84. Other vegetable products, not specially mentioned	100 kilos	2.00
85. Animal products employed in medicine	do	.60

GROUP 2.—*Colors, dyes and varnishes.*

86. Ochres and natural earths, for painting	100 kilos	.02
87. Indigo and cochineal	do	2.00
88. Dyeing extracts	do	.60
89. Garancine, pure or mixed with madder	kilo	.15
90. Varnishes	100 kilos	4.80
91. Colors, in powder or in lumps (*a*)	do	1.50
92. Colors, prepared, and inks	do	5.00
93. Colors derived from coal, and other artificial colors (*b*)	kilo	.15

GROUP 3.—*Chemical and pharmaceutical products.*

94. Muriatic and chlorhydric acid	100 kilos	0.20
95. Nitric acid	do	.80
96. Sulphuric acid	do	.30
97. Alkaloids and their salts	kilos	6.00

(*a*) The colors included in this number are those composed of a metallic base, which for use are mixed with oil or turpentine and are generally insoluble in water, alcohol or ether. They are rarely crystalized and are almost always in powder and lumps, such as white lead, chrome yellow, vermillion, Prussian and Thenardt blue, English green, and parrot green ("papagayo").

(*b*) The colors classed in this number are those known as artificial or organic products, in which mineral substances rarely enter. They are generally crystalized, and are soluble in water, alcohol or ether. They are employed in dyeing and printing, with or without mordant, rather than in painting, such as picric acid, green aldeide, English violet, rosaline and its salts, naphthaline colors, artificial alizarine, etc.

		Pesos.
98. Alum	100 kilos	0.30
99. Sulphur	do	.05
100. Barillas, natural and artificial (*a*)	do	.20
101. Alkaline carbonates, alkalis, caustic and ammoniacal salts, except sulphate	100 kilos	.20
102. Chloride of lime	do	.30
103. Chloride of potassium, sulphate of soda, chloride, carbonate and sulphate of magnesia	100 kilos	.10
104. Chloride of sodium (common salt)	do	.65
105. Glues and albumen	do	2.40
106. Phosphorus	kilo	.07
107. Nitrate of potash (saltpeter)	100 kilos	.30
108. Nitrate of soda and sulphate of ammoniac	100 kilos	.05
109. Oxides of lead	do	.40
110. Sulphate and pyrolignite of iron	do	.30
111. Pills, capsules, jujubes, and the like (*b*)	kilo	1.00
112. Pharmaceutical products not specified (*b*)	do	.80
113. Chemical products not specified	do	.20

GROUP 4.—*Various.*

114. Starch	kilo	.02
115. Feculæ for industrial uses, and dextrine	100 kilos	.20
116. Common soap	do	3.75
117. Paraffine, stearine, wax and spermaceti, in lumps	100 kilos	3.30

(*a*) By barillas, natural and artificial, are understood carbonates of soda, impure, containing carbon.

(*b*) The products or substances included in Nos. 111 and 112 shall be examined by the pharmaceutical inspectors, who, in conjunction with the customs, will make a declaration as follows: "The goods cleared are those expressed in the declaration and are (or are not) admitted to importation by virtue of their formulas having been published (here state where), or their composition having been discovered by analysis made by ———."

		Pesos.
118.	Paraffine, stearine, wax and spermaceti, manufactured, and wooden matches	10.00 per 100 kilos
119.	Perfumery and essences	.40 per kilo
120.	Gunpowder, explosive compounds, and fuses for mines	.10 per kilo
121.	Tobacco, manufactured	2.40 do
122.	Tobacco, not manufactured	.20 do

Class IV.—Cotton and its manufactures.

Group 1.—*Raw cotton.*

123.	Raw cotton, with or without seed	*0.24 per 100 kilos

Group 2.—*Cotton yarns.*

124.	Cotton, spun, and yarn twisted in one or two threads, unbleached, bleached, or dyed, up to No. 35, inclusive (*a*)	*0.25 per kilo
125.	The same from No. 36 upward (*a*)	* .35 do
126.	The same twisted with three or more threads, unbleached, bleached or dyed	.50 per kilo

Group 3.—*Tissues.*

Close-woven tissues, plain, unbleached, bleached, or dyed, in the piece or in handkerchiefs, having:

127.	A. Up to 25 threads, inclusive	*0.20 per kilo
	B. Up to 35 threads, inclusive	* .32 do

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*Add surtax of 20 per cent. on duty.

(*a*) To ascertain the number, according to the English system (the system adopted in this tariff), to which a cotton yarn corresponds, any number of meters of yarn may be taken, and this number is to be multiplied by the invariable factor 59 (this being the number of centigrammes a meter of cotton yarn of a single thread No. 1 weighs). The product of the above multiplication is to be divided by the number of centigrammes that the length of yarn tested may weigh. The quotient multiplied by the number of threads will then give the corresponding English number, to which 7 or 10 per cent. is to be added, according as the cotton of more than one thread be only spun or spun and dyed.

			Pesos.
128.	36 threads and above	kilo	*0.44
	Tissues, printed, twilled, and figured in the loom, having:		
129.	A. Up to 25 threads, inclusive	kilo	.25
	B. Up to 35 threads, inclusive (*a*)	do	.40
130.	36 threads and above	do	* .55
	Tissues transparent, such as muslins, cambrics, lawns, organdies and gauzes of all kinds, having:		
131.	A. Up to 30 threads, inclusive	kilo	* .44
	B. 31 threads and above	do	* .64
132.	Quiltings and piqués	do	.50
133.	Velveteens, corduroys, and other thick tissues for wearing apparel	kilo	.52
134.	Tulles	do	1.00
135.	Lace, except crochet (*b*)	do	*1.25
136.	Crochet lace, made by hand or in the loom	kilo	.70
137.	Hoisery piece goods, jerseys and drawers	do	.50
138.	Hoisery in stockings, socks, gloves, and other articles	kilo	.60

CLASS V.—HEMP, FLAX, ALOE, JUTE, AND OTHER VEGETABLE FIBERS AND THEIR MANUFACTURES.

GROUP 1.—*Raw.*

139.	Hemp, raw or hackled	100 kilos	0.40
140.	Flax, raw or hackled	do	.40
141.	Jute, aloe, and other vegetable fibers	do	.04

*Add surtax of 20 per cent on duty.

(*a*) The number of threads is to be ascertained by count of the threads contained in a square of 6 millimeters, counting the weft and the warp. The instrument called "thread counter" is to be employed for this purpose.

(*b*) Lace of a maximum width of 10 centimeters shall be dutiable according to this number; that wider shall be included in No. 134 as tulles.

GROUP 2.—*Yarns.*

		Pesos.
142.	Yarn of hemp, linen, or jute	kilo 0.22
143.	Yarn of aloe, and other vegetable fibers (*a*)	100 kilos 1.56
144.	Threads, twisted, of two or more ends, and fishing nets	kilo .30
145.	Cordage (*b*) for vessels	100 kilos 4.16

GROUP 3.—*Tissues.* (*c*)

146.	Plain tissues of hemp and flax, with or without mixture of cotton, up to 10 threads, inclusive	kilo *0.20
147.	Plain tissues of hemp and flax, from 11 to 24 threads, inclusive	kilo * .44
148.	Plain tissues of hemp and flax, of 25 threads and above	kilo * .60
149.	Plain tissues of hemp and flax, twilled or diapered	kilo .40
150.	Lace, net, and crochet work	do 4.80
151.	Knitted tissues	do 1.20
152.	Plain tissues of jute, aloe, or other vegetable fibers, with or without mixture of cotton	kilo .15

* Add surtax of 20 per cent. on duty.

(*a*) As yarn of jute is considered twisted thread of one end the thickness of which is equal to or less than the English No. 1, that exceeding this number is considered as cordage. To ascertain this number any number of meters of yarn may be taken, and this number is to be multiplied by the factor 165 (1 meter of yarn of jute, No. 1, weighs 165 centigrams), and divided by the number of centigrams that the length of the yarn tested may weigh. The quotient will then give the corresponding English number.

(*b*) By the cordage paying under this heading shall be understood, hemp, flax, or jute yarn, twisted in two or more strands, 10 meters of which weigh more than 5 grams.

(*c*) In linen tissues paying according to the number of threads, the threads (both warp and woof) contained in a space of 6 millimeters will be counted.

		Pesos.
153. Twilled or diapered tissues of the same materials, with or without mixture of cotton	kilo	0.50

CLASS VI.—WOOLS, BRISTLES, HAIR, HORSEHAIR, AND THEIR MANUFACTURES.

GROUP 1.—*Raw.*

154. Bristles, horsehair and other hair, including hair of the camel, vacuña, and of the Angora and cashmere goat; wool unwashed (*a*), washed, combed or carded (*b*), and waste wool, carded (*c*)	100 kilos	2.00

GROUP 2.—*Yarns.*

155. Woolen and worsted yarns, spun and twisted, unbleached or in the grease (*d*)	kilo	0.35
156. Woolen and worsted yarns, washed or bleached	kilo	.60
157. Woolen and worsted yarns, dyed	do	* .70

GROUP 3.—*Tissues.*

158. Woolen carpets, pure or mixed with other materials	kilo	*0.50

* Add surtax of 20 per cent. on duty.

(*a*) Wool will be considered as unwashed when after having been washed with sulphuret of carbon it is found to lose more than 10 per cent. of its weight.

(*b*) Wool, the threads of which exceed 10 centimeters in length, is considered as long wool.

(*c*) The waste from carding included in this number is that obtained from the picking and unraveling of old rags and is almost always dyed and common. Waste resulting from the spinning of long wool shall also be classed herein.

(*d*) Worsted yarn will be considered unbleached or in the grease if, when washed with sulphuret of carbon, it loses more than 10 per cent. of its weight.

		Pesos.
159.	Felts of pure wool, or mixed with other materials ---------- kilo	0.20
160.	Blankets of wool, pure, or mixed with other materials (*a*) ---------- kilo	.40
161.	Hosiery, whether mixed or not with cotton or other vegetable fibers ---------- kilo	.48
162.	Cloths and all other similar tissues of wool, waste wool, hair, or a mixture of these materials ---------- kilo	.80
163.	The same tissues, when the warp is wholly of cotton or other vegetable fibers, also astrakhans and plushes of the same material ---------- kilo	.60
164.	All other tissues of pure wool, waste wool, hair, or a mixture of these materials -- kilo	1.00
165.	The same tissues, when the warp is wholly of cotton or other vegetable fibers ---- kilo	.80
166.	Tissues of bristles or hair, with or without mixture of cotton or other vegetable fibers ---------- kilo	.70

Class VII.—Silk and its manufactures.

Group 1.—*Yarn.*

167.	Silk, raw, and spun, twisted or not; floss silk, combed or carded (*b*), spun, twisted or not (*b*) ---------- kilo	*2.50

Group 2.—*Tissues.*

168.	Tissues, plain or twilled ---------- kilo	*4.00
169.	Velvets and plushes ---------- do	4.80

*Add surtax of 20 per cent. on duty.

(*a*) Plaids and the like are not included in this number. They shall pay duty according to the component tissue.

(*b*) All silk waste, the fibers of which do not exceed 20 centimeters in length, is considered silk.

		Pesos.
170.	Tissues of floss or waste silk, of raw silk and of waste silk mixed with silk (*a*)_____kilo	3.00
171.	Tulles and lace, of silk or waste silk____do	8.00
172.	Knitted tissues of silk or waste silk_____do	4.40
173.	Velvets and plushes of silk or waste silk, with the warp or weft wholly of cotton or other vegetable fibers_____kilo	3.60
174.	Other tissues of silk or waste silk, with the warp or weft wholly of cotton or other vegetable fibers _____kilo	2.30
175.	Tissues of silk or waste silk, with the warp or weft wholly of wool or hair_____kilo	2.50

Class VIII.—Paper and its applications.

Group 1.—*Printing and writing paper.*

176.	Paper, endless, unsized and half-sized for printing _____kilo		0.06
	Paper, endless, for writing, lithographing or engraving _____kilo	*	.08
	Paper, cut hand-made and ruled paper__do		.12

Group 2.—*Paper, printed, engraved, or photographed.*

177.	Books, bound or unbound, and other printed matter in Spanish (*b*)_____kilo	0.10
	Books, bound, in foreign languages (*b*)_do	.05
	Engravings, maps and drawings_____do	.25

Group 3.—*Wall paper.*

178.	Wall paper, with gold, silver, wool, or glass _____kilo	0.40
	Wall paper, of other kinds_____do	.10

*Add surtax of 20 per cent. on duty.

(*a*) All silk waste, the fibers of which do not exceed 20 centimeters in length, is considered silk.

(*b*) Book binding shall be dutiable according to the component material. When the books are stitched or bound in boards, they shall pay duty as printed matter, on gross weight. Newspapers printed abroad require no permit for their introduction into the Philippine Islands.

GROUP 4.—*Pasteboard and various papers.*

			Pesos.
179.	Straw paper, common packing paper, and sand or glass paper	kilo	*0.04
	Other paper not specially mentioned	do	.08
	Cardboard in sheets, in boxes lined with ordinary paper (*a*), and unfinished articles of pasteboard or "carton-pierre"	kilo	.04
	The same articles finished, and pasteboard boxes with ornaments, or lined with fine paper or other materials	kilo	.30

CLASS IX.—WOOD AND OTHER VEGETABLE MATERIALS EMPLOYED IN MANUFACTURES, AND ARTICLES MANUFACTURED THEREWITH.

GROUP 1.—*Wood.*

180.	Staves	thousand	0.40
181.	Ordinary wood, in boards, even cut, planed and dove-tailed for boxes or floorings; planks, beams, rafters, masts and timber for shipbuilding	cubic meter	.55
182.	Fine wood for cabinet-makers, in boards, deals, trunks, or logs	100 kilos	.11
183.	Fine wood for cabinet-makers, sawn or in veneers	100 kilos	.90
184.	Coopers' wares, fitted together or not	do	*2.00

GROUP 2.—*Furniture and wooden manufactures.* (*b*)

185. Ordinary wood manufactured into any kind of article, turned or not, painted or varnished, and mouldings carved and var-

* Add surtax of 20 per cent. on duty.

(*a*) Boxes of pasteboard, lined with more or less common paper, which serve for packing handkerchiefs, shirt-fronts, buttons, stuffs, etc., shall be dutiable according to this number. Paper pulp in imperforated sheets or those which are not perforated at the expense of the importer at the time of clearance, shall likewise be dutiable according to this number.

(*b*) Marble slabs for furniture will be taxed according to No. 25 of the tariff if they are presented separate from the objects to which they belong.

		Pesos.
	nished, or prepared for gilding, also furniture of bent wood, even if painted and varnished ----------100 kilos	*2.00
186.	Fine wood manufactured into furniture, and other wares, turned, carved, polished or varnished, and the same wares of common wood veneered with fine wood; furniture covered with stuffs, except with silk or leather, and gilt moldings------100 kilos	*6.00
187.	The same articles, gilt, inlaid or veneered with mother-of-pearl or other fine materials, and ornamented with metal, and furniture covered with stuffs of silk or with leather----------100 kilos	*10.00

GROUP 3.—*Various.*

188.	Charcoal, fire-wood, and other vegetable combustibles ----------100 kilos		0.10
189.	Cork ----------	do	.18
190.	Wooden hoops and trellis for fencing	do	* .20
191.	Rushes, esparto, vegetable hair, cane, osiers, fine straw, palm, and other analogous materials, unmanufactured--------100 kilos		.05
192.	The same materials, manufactured	do	*6.05

CLASS X.

GROUP 1.—*Animals, skins, and animal products employed in industry.*

193.	Horses ----------each		20.00
194.	Mules, asses and cattle----------	do	10.00
195.	Pigs ---------- -------	do	2.70
196.	Sheep, goats, and animals not otherwise mentioned ----------each		* .50

GROUP 2.—*Skins and leather.*

197.	Skins and hides, untanned--------100 kilos		1.20

*Add surtax of 20 per cent on duty.

		Pesos.
198.	Varnished leather and calfskin, tanned or curried ---------- kilo	0.64
199.	Other hides, tanned or curried, including sole leather ---------- kilo	.24
200.	Leather belting for machinery ---------- do	.20
201.	Peltries for clothing and trimming, in their natural state or prepared ---------- kilo	.25
202.	Peltries in made-up articles ---------- do	1.80
203.	Gloves of leather ---------- do	5.00
204.	A. Boots of all kinds, of leather or tissue pair ----------	* .40
	B. Shoes of all kinds ---------- pair	* .26
	C. Slippers and pumps, also common shoes generally worn by Chinese ---------- pair	* .10
	D. Boots and shoes of all kinds for children shall pay one-half of the above duties, according to classification.*	
205.	Saddlers' and harness-makers' wares (a) kilo ----------	* .75
206.	Other articles of leather or lined with the same ---------- kilo	1.00

GROUP 3.—*Feathers.*

207.	Feathers for ornament, in their natural state or manufactured ----------	kilo	3.00
	Other feathers and feather dusters ----	do	.40

GROUP 4.—*Other animal remains.*

208.	Animal fats ----------	100 kilos	*0.20
209.	Animal manures of all kinds ------	do	.01
210.	Intestines ----------	kilo	.04
211.	Other animal remains not mentioned, not manufactured ----------	100 kilos	.10

*Add surtax of 20 per cent. on duty.

(a) Saddlers' and harness-makers' wares comprise such articles as harness, saddles, bridles, gear of horses, mules, carriages, etc., all sorts of stable trappings, articles for traveling, such as bags, portmanteaus, trunks, hat boxes, and other articles made of leather or lined with leather or skin.

CLASS XI.—INSTRUMENTS, MACHINERY, AND APPARATUS EMPLOYED IN AGRICULTURE, INDUSTRY, AND LOCOMOTION.

GROUP 1.—*Musical instruments, clocks, and watches.*

			Pesos.
212.	Pianos (*a*)	each	25.00
213.	Harmoniums and cabinet organs	do	4.00
214.	Gold watches	do	4.00
215.	Watches of silver or other metals	do	2.00
216.	Common clocks with weights, and alarm clocks (*b*)	each	1.00
217.	Works for wall clocks, or mantelpiece clocks, finished, with or without cases, and chronometers (*c*)	each	1.12

GROUP 2.—*Apparatus and machines.*

218.	Weighing machines	100 kilos	5.50
219.	Agricultural machines (*d*)	do	.20
220.	Motors	do	.50

(*a*) Strung frames for pianos shall pay as pianos, though they be not imported with all the pieces constituting that instrument.

(*b*) By alarm clocks shall be understood those fitted with an alarm bell and not running longer than 48 hours, whether they have the same mechanism for striking both the hours and the alarm, or separate mechanisms for each.

(*c*) Cases, stands, glass shades, and other accessories will be dutiable as manufactured articles, according to their component material.

Clockworks for wall or table clocks, unfinished, and brass pieces for the same, will be taxed according to No. 49 of the tariff. Unfinished pieces are those which are only roughly filed, which have no escapements, the dial or hands of which are not adjusted, and the last wheel of which is not crenated. When clocks are imported within cases on stands, etc., and the importer does not wish to separate them for their examination, the works and the dial will be reckoned as weighing 1 kilogram and the rest will pay as stated above.

(*d*) These machines are those employed by farmers and agriculturists for preparing the ground and gathering the crops, as also those employed in order to clean the crops and improve them without essentially changing their nature.

		Pesos.
221.	Machines of copper and its alloys, for industrial purposes, and detached parts of the same metals (*a*)----------100 kilos	5.50
	Machines and detached parts (*b*) of other materials, for industrial purposes----------100 kilos	1.80

GROUP 3.—*Carriages.*

222.	Coaches and berlins of four seats, with or without hoods; new, used or repaired----------each	50.00
223.	Berlins of two seats, with or without folding seats, with or without hoods; omnibuses with more than fifteen seats; new, used or repaired ----------each	25.00
224.	Carriages not enumerated in the above headings ----------each	12.50

(*a*) Machines, and separate pieces of the same, of copper and its alloys, or in combination with other materials, shall also be taxed under this heading, provided the above metals predominate in weight.

(*b*) It will be necessary to prove to what manufacture or to what industry woolen hose and filters are destined for them to be assessed in this number. For the definition of parts of machinery, the following rules will be observed:

First. A separate piece of a machine is understood to be any object which is not expressly specified by name under some heading of the tariff, and which by its shape, and by the manner in which it is presented for clearance in the custom-house, though not completely finished, may be considered as exclusively destined for a machine and can have no other application. If it be imported completely finished it must pay under one of the headings of the tariff referring to machinery.

Second. The importer of detached parts of machinery may, should he deem it convenient, request, when making the clearing, that the duty be levied on the component material instead of paying the duty stipulated for machines.

Third. Tubes, bars, axles, screws, bolts, sheets, plates, boiler bottoms, wire, and other articles expressly taxed in the tariff must pay duty accordingly, though they be destined for machinery.

Fourth. Tools, instruments, and utensils employed in the arts and industries cannot be considered parts of machinery, as far as the customs tariff is concerned, and must pay duty according to the materials of which they are composed.

			Pesos.
225.	Passenger carriages for railways and tramways, and finished wooden parts for same	100 kilos	7.50
226.	All other railway carriages and finished wooden parts for same	100 kilos	2.17
	Carts and handcarts	do	2.00

CLASS XII.—ALIMENTARY SUBSTANCES.

GROUP 1.—*Meat and fish.*

227.	Live and dead poultry and small game	pair	0.05
228.	Meat, salted, and jerked beef	kilo	.08
229.	Pork and lard, including bacon	do	.15
230.	Other kinds of meat	do	.09
231.	Butter	do	.20
232.	Salt cod and stockfish	do	.04
233.	Fresh fish, or with the salt indispensable for its preservation	kilo	.01
234.	Fish, salted, smoked and pickled	do	.06
235.	Shellfish	do	.05

GROUP 2.—*Grain and vegetables.*

236.	Rice, husked or not	100 kilos	.75
237.	Wheat	do	.60
238.	Wheat flour (*a*)	do	2.10
239.	Other cereals	do	.50
240.	Flour of same	do	1.00
241.	Pulse	kilo	.02

GROUP 3.—*Garden produce and fruits.*

242.	Garden produce	kilo	.02
243.	Fruits	do	.04

GROUP 4.—*Colonial products.*

244.	A Sugar, raw	kilo	0.02
	B Sugar, refined	do	.10

(*a*) To ascertain whether products presented for clearance are flour or groats, a sample thereof shall be placed in sieve No. 80 (silk tissue with 80 openings to a French square inch). If the product passes through this sieve it shall be considered as flour; if not, as groats.

		Pesos.
245. Cocoa, of all kinds and origin	kilo	.12
246. Coffee, of all kinds and origin	do	.10
247. Cinnamon, of all kinds and origin	do	.12
248. Cloves	do	.14
249. Pepper	do	.07
250. Tea, of all kinds and origin	do	.20

GROUP 5.—*Oils and beverages.*

251. Olive oil	kilo	.12
252. Common brandy of vinic alcohol	liter	.09
253. A. Brandy, flavored with aniseed, composed brandies and liquors of vinic alcohol	liter	.20
B. Common brandy, flavored with aniseed, composed brandies and liquors not exclusively made of vinic alcohol, *i. e.*, those known as industrial	liter	.36
254. Beer and cider in wood, 5.50 per hectoliter; in bottles, 7.75 per hectoliter.		
255. Wines, sparkling	liter	.25
256. Wines, other	do	.12

GROUP 6.—*Seeds and forage.*

257. Seeds not mentioned and carob beans	100 kilos	.32
258. Forage and bran	do	.10

GROUP 7.—*Various.*

259. Alimentary preserves, pork-butchers' produce, mustard and sauces	kilo	.20
260. Chocolate	do	.20
261. Sweetmeats	do	.20
262. Eggs	hundred	.25
263. Pastes for soups, alimentary feculæ, bread and unsweetened biscuit	kilo	.04
264. Cheese	do	.15

		Pesos.
265. Honey and molasses (*a*)	kilo	0.01

CLASS XIII.—*Various.*

266. Ornaments of every kind, not mentioned in the following numbers, other than those of gold or silver	kilo	3.00
267. Amber, horn, jet, whalebone, bone, tortoise shell, coral, meerschaum, ivory, mother-of pearl and paste, in the rough or cut, even in strips or sheets	kilo	.01
268. Amber, jet, tortoise shell, coral, ivory, mother-of-pearl and aventurine, manufactured in ornaments of all kinds	kilo	5.00
269. Horn, whalebone, meerschaum, bone and paste in imitation of the substances last above specified, manufactured	kilo	.50
270. Walking sticks and sticks for umbrellas and parasols (*b*)	hundred	5.00
271. Buttons of all sorts, except those of gold or silver	kilo	1.00
272. Cartridges, without projectiles or bullets, for firearms, the importation of which is permitted	kilo	.11
273. Cartridges with projectiles or bullets for the same firearms	kilo	.15
274. Percussion caps for firearms	do	.12
275. Cases of fine woods, leather, and those lined with silk and other of similar kind, with or without fittings, for writing, sewing and toilet purposes, or to contain perfumery, liquids or comestibles	kilo	1.50

(*a*) Honey and treacle, which is the viscous residue of crystallized sugar, of a reddish-brown color more or less intense and of a sweet but somewhat bitter taste, will also be appraised by this article. It weighs from 1,374 to 1,427 grams per liter, and at 15° C. registers from 40° to 44° Baumé.

(*b*) Sword sticks shall pay the duty fixed for the swords they contain, and shall, in addition, pay as walking sticks.

		Pesos.
276.	The same of common woods, cardboard, wicker and other of similar kind, with or without fittings for the aforesaid purposes ---------- kilo	.60
277.	India rubber and gutta-percha manufactured ---------- 100 kilos	.60
278.	India rubber in sheets and tubes ---------- kilo	.15
279.	India rubber in threads ---------- do	.10
280.	India rubber manufactured in any shape or into any kind of article ---------- kilo	.44
281.	Oilcloths and tarpaulin, for floors and packing purposes ---------- kilo	.07
282.	Oilcloths and tarpaulin of other classes ---------- do	.16
283.	Toys and games, except those of tortoise shell, ivory, mother-of-pearl, gold or silver ---------- kilo	.22
284.	Wicks, for lamps and candles ---------- do	.12
285.	Silk umbrellas and parasols ---------- each	.60
286.	Umbrellas and parasols covered with other stuffs ---------- each	.28
287.	Trimmings of silk (*a*) ---------- kilo	2.80
288.	Trimmings of wool (*b*) ---------- do	1.40
289.	Trimmings of all other kinds ---------- do	.80
290.	Oil paintings ---------- each	.20
291.	Straw hats and bonnets ---------- do	.32
292.	Other sorts of hats and bonnets, trimmed and finished (*c*) ---------- each	.40
293.	Hats, not trimmed, and bonnets ---------- do	.20
294.	Hats and bonnets, of all kinds and of any material, with milliners' work ---------- each	1.50

(*a*) Trimmings which contain more than 40 per cent of silk of their total weight shall pay duty as silk trimmings.

(*b*) Trimmings which contain more than 40 per cent of wool, or of wool and silk, of their total weight shall pay as woolen trimmings.

(*c*) Felt hats shall be considered as trimmed when they have more work than what is indispensable to shape the crown.

In order to avoid abuses the samples declared for free entry must have cuts at every 20 centimeters of their width, so as to render them unfit for any other purpose.

321. Samples of trimming in small pieces, of no commercial value or possible application.

322. Gold, silver and platinum in broken-up jewelry or table services, bars, sheets, coins, pieces, dust and scrap.

323. Gold, silver and platinum in articles manufactured and stamped in the Philippine Islands.

324. Gypsum (sulphate of lime).

ARTICLES FREE OF DUTY, SUBJECT TO THE FOLLOWING CONDITIONS.

325. Wearing apparel, toilet objects and articles for personal use, bed and table linen, books, portable tools and instruments, theatrical costumes, jewels and table services bearing evident signs of having been used, imported by travelers in their luggage in quantities proportionate to their class, profession and position.

When travelers do not bring their baggage with them the clearing of the same may be made by the conductor or persons authorized for the purpose, provided they prove, to the satisfaction of the administration, that the effects are destined for private use.

Works of fine art acquired by the government, academies or other official corporations, and destined for museums, galleries, or art schools, when due proof is given as to their destination.

Archæological and numismatical objects for public museums, academies and scientific and artistic corporations, on proof of their destination.(*a*)

(*a*) Reproductions shall be classed as artistic works when only one copy of each original is imported and when intended for any of the above-mentioned official corporations, on condition that these reproductions are cast in gypsum or bronze. Copies imported by merchants or private persons shall not enjoy this exemption, as the free entry is only granted on proof that the copies are intended for public establishments.

Specimens and collections of mineralogy, botany, and zoology, and small models for public museums, public schools, academies, and scientific and artistic corporations, on proof of their destination.

If the regulations in each case are not complied with, or if the examination be not entirely satisfactory, the exemption will be annuled and the duties stipulated in the tariff will be collected.

ARTICLES FREE OF DUTY, SUBJECT TO THE FORMALITIES DETERMINED FOR EACH CASE BY THE CUSTOMS REGULATIONS.

326. Casks, sacks, and large recipients of metal, imported with goods dutiable separately from such recipients and when they are to be exported.

327. Carriages, trained animals, portable theaters, panoramas, wax figures and other similar objects for public entertainment, imported temporarily.

328. Furniture of persons coming to settle in the Philippine Islands, which has been in use by them.

329. Foreign articles destined to exhibitions held in the Philippine Islands.

330. Submarine telegraph cables.

331. Pumps intended for the salvage of vessels.

332. Parts of machinery, pieces of metal, and wood imported for the repair of foreign vessels which have entered ports of the Philippine Islands through stress of weather.

GOODS NOT SPECIALLY CLASSED IN THE TARIFF.

333. Yarns composed of two or more textile materials shall pay the duty assessed on the material paying the higher duty.

The warp of tissues is to be considered as the totality of the threads which lie in the longitudinal sense, whether they form the foundation of the same or

whether they may have been added in order to form patterns or to give more body to the stuff, even though such threads may be cut or show a want of continuity. The weft shall be considered the totality of the threads which cross the warp of the tissue and combine the same conditions of helping to form patterns or add to the body of the stuff.

334. Tissues with the warp of cotton and the weft of another vegetable material, or vice versa, shall pay in accordance with the numbers of group 3 of class 5 to which they correspond, according to their nature.

Tissues which have the weft entirely made up of cotton and the warp entirely of wool or of wool and cotton, whatever the proportion of the mixture may be, shall be considered as woolen tissues mixed with cotton.

Tissues composed of two materials shall be taxed as follows:

a. Tissues composed of vegetable fibers and those of wool or hair, the weft or warp of which is mixed with silk or floss-silk threads, shall not be considered as tissues mixed with silk when the weight of this material does not exceed 5 per cent. of the total weight of the tissue.

b. Tissues the warp or weft of which is composed of threads of vegetable fibers and silk, or of threads of wool, hair and silk, shall be taxed as tissues of vegetable fibers or of wool, or of hair when the weight of the silk on both sides of the stuff does not exceed 5 per cent. of the total weight of the tissue. If the silk threads surpass 5 per cent., but do not exceed 10 per cent., the tissues shall be taxed as silk tissue mixed, according to numbers 173 to 175, inclusive, of the tariff; if they exceed 10 per cent., they shall be taxed according to the numbers 168 to 172, inclusive, according to the class and nature of the tissue.

c. Tissues, the warp of which is composed of silk and the weft of cotton or other vegetable fibers mixed with

silk, and those of which the warp is of silk and the weft of wool or hair mixed with silk, shall always be classed as pure silk tissues, and the numbers relating to such tissues shall be applied according to their class and nature, whatever be the proportion of silk in the weft. The same rule shall be observed when the weft is entirely composed of silk and the warp of mixed materials.

Tissues composed of threads of three different materials shall pay as follows:

Warp or weft.	Weft or warp.	Will be considered as—
Cotton threads	Flax or hemp threads and those of other vegetable fibers.	Tissues of flax or hemp.
Threads of vegetable fiber.	Threads of vegetable fibers and those of wool or hair.	Tissues of vegetable fibers mixed with wool.
Do	Threads of vegetable fibers and silk.	Tissues of vegetable fibers mixed with silk.
Do	Threads of wool and silk.	Do.
Threads of wool or hair.	Threads of two or more vegetable fibers.	Tissues of vegetable fibers mixed with wool.
Do	Threads of vegetable fibers, wool or hair.	Tissues of wool.
Do	Threads of vegetable fibers and silk.	Tissues of wool mixed with silk.
Threads of silk	Threads of different vegetable fibers.	Tissues of vegetable fibers mixed with silk.
Threads of silk	Threads of vegetable fibers and wool or hair.	Tissues of silk mixed with wool.
Threads of cotton, flax or hemp.	Threads of flax, hemp, or other vegetable materials.	Tissues of hemp or flax.
Threads of vegetable fibers and wool or hair.	Threads of vegetable fibers and silk.	Tissues of wool mixed with silk.
Do	Threads of vegetable fibers wool and silk.	Do.
Threads of vegetable fibers wool and silk.	....do	Tissues of silk.
Threads of cotton and floss silk.	Threads of wool and floss silk.	Tissues of floss silk.
Threads of wool	Threads of wool, cotton and silk.	Tissues of silk mixed with wool.

When the highest taxed thread, whether weft or warp, entering in tissues composed of three or more different materials does not exceed by 10 per cent. the total weight of the tissue, such thread shall not be considered in the payment of duties, and the duty on tissues mixed with other materials shall be applied.

335. Tulles shall pay the duty on the material forming the ground, and should this be mixed, the duty of the predominant material.

336. Shawls with fringes shall pay, including the weight of fringes, according to the class of the tissue of which they are made.

Tissues embroidered by hand or machine, not in a loom, and those mixed with fine or imitation metals, whether embroidered or not, shall pay the duty corresponding to their class, with a surtax of 50 per cent.

337. Ready-made clothing, including body linen, whether completely finished or only stitched or seamed, and knitted tissues, festooned, shall pay on their total weight the duties fixed for the material of which they may be composed in their exterior part, with a surtax of 50 per cent.

338. Articles of clothing made of knitted tissues are exempt from the above-mentioned additional duty, and will pay duty according to the respective tariff number without any increase, on condition, however, that they have not been cut from the piece and have not passed through the hands of tailors or milliners. In the latter case they will be subject to the additional duty levied on ready-made clothing and linen articles.

339. Wreckage of foreign vessels lost on the coasts of the Philippine Islands shall pay 8 per cent. ad valorem on their selling price at public auction. This sale shall be effected conformably to the formalities prescribed by the ordinances.

340. Floating docks, whatever their power, size or construction, shall pay a duty of 6,250 pesos.

341. The duty on articles composed of two or more materials shall be levied according to the following rules:

a. In cases not provided for in the tariff, and when the value of the article is determined by the exterior material, the classification shall be made according to the corresponding number of this material.

b. Articles which, by their nature and application, are composed of two different materials (for instance, tools of iron), shall be taxed according to the material predominating in weight.

c. When the mixture of different materials has been made in order to evade the payment of the duties on any article, as for instance, a mixture of flour and bran, of earth and a soluble chemical product, the duty of the material paying the highest duty shall be levied.

PACKAGES AND RECIPIENTS.

342. By exterior package is understood that which is visible when the package is unopened. All the others contained therein are considered to be interior packages.

The following articles shall pay on the gross weight when they are contained in a single package:

Oils and greases; meat, fish and intestines when imported in brine; scales and machinery; chemical products and drugs; also all other articles enumerated in Nos. 26, 28, 31, 36, 76, 85, 86, 182, 188, 191, 201, 209, and 211, tariff schedules.

343. Should any of the articles mentioned in the preceding paragraph be imported in two or more packages, or in packets contained in the exterior package, only the weight of the interior packages or packets shall be included in the weight of the goods.

All other goods, including buttons and haberdashery, packed in pasteboard boxes, shall pay duty on paper wrappings, ribbons, packets, or interior packages, pro-

vided, always, that they are not fancy boxes, etc., assessed separately.

344. Boxes and cases in general, paper wrappings or cardboard for shirt fronts, and paper used for wrapping up shawls of Chinese silk, the exterior covering as well as the paper placed between the folds, and the fine gold foil, shall be taxed separately under their proper class.

345. Percussion caps for firearms, hooks and eyes, pins, eyelet holes of metal, detached buttons, steel pens, games and toys, instruments of science and art, and other similar objects, shall pay with the weight of the interior cases or boxes containing them, and in which they are generally retailed.

346. Vessels containing alkaloids and their salts, brandy, liquors, beer, cider, and wines shall be assessed separately, according to their respective materials.

347. The rollers, boards, and pieces of cardboard around which fabrics are wrapped, including wire gauze, oilcloth, trimmings, ribbons, etc., as well as the cardboard bobbins on which yarn is wound, shall be deducted from the dutiable weight of such articles.

348. Articles contained in double sacks, or in a sack and another distinct covering, shall be assessed with that immediately covering the goods. Tea shall be taxed with all the interior packages.

349. Casks, barrels, and large metal receptacles shall pay duty according to their class, except when they contain goods which pay on the gross weight.

350. Sacks and packing cloth sewn in the shape of sacks, serving as packages, shall pay 2 centimes of a peso each, except when they contain goods which pay on the gross weight.

351. When goods subject to duty on the gross weight and articles paying on the net weight are contained in one and the same exterior package, the gross weight shall be proportionately reduced.

352. When packages of goods are subject to a higher duty than the goods themselves, being other than those generally employed or when they can be used for another purpose, they shall be taxed at the rate corresponding to their class.

TARE ALLOWANCE.

353. The following percentage shall be deducted, as tare, from the gross weight of the goods mentioned below:

	Per cent.
Steel, in cases	10
Cinnamon, in boxes	20
Cinnamon, in bags	8
Phosphorus, in tin boxes	30
Phosphorus, in tin boxes inclosed in wooden boxes	50
Garancine, in casks	20
Yarns, in bales	3
Tin plate, in cases	10
Faience, porcelain and fine earthenware, in cases or casks	30
Faience, porcelain and fine earthenware, in crates	16
Glass and crystal, hollow or flat, silvered or not, in cases or casks	40
Glass and crystal and common thin window glass, in a single box	20

354. Glass and crystal contained in crates are not subject to the above tare. By crate is meant a box made of boards, such boards being separated one from the other in such manner that the open spaces between them are equal to, or larger than, the boards themselves.

355. The above-mentioned tares shall be deducted even when the packages contain other goods not subject to the legal tare, provided, however, that such goods do not exceed 50 per cent. of the gross weight. When they exceed this limit the provisions of this disposition shall

not be applied and the packages shall be taxed according to their class.

Special tare allowance.

	Per cent.
Cotton and flax thread on wooden spools: For the spools only	30
Silk and floss silk thread on wooden spools: For the spools only	45
Trimming, etc.: For the interiors of wood, paste or similar materials, except those of textile materials (of the net and exclusive weight of the articles)	10
Perfumery, in flasks, pots and small boxes, for retail sale: For all the interior packages and recipients	25

356. Soaps, essences for liquors and perfumery not imported in the form above mentioned shall pay with interior packages and receptacles.

Whenever duties are assessed according to weight, a proper allowance shall be made for the weight of the outside case, cask, or other package containing the goods, unless otherwise provided for; and duties shall be assessed upon the weight or quantity of the contents as actually found on arrival, but no allowance shall be made for damage occurring on the voyage except in case of marine disaster.

REIMPORTATION OF NATIONAL PRODUCTS.

357. Goods, fruits, and articles of the Philippine Islands exported abroad and reimported, owing to their not having been sold at the place of destination, shall be exempt from the payment of duty, provided, always, that they are enclosed in the same packages and bear the same marks and that they are accompanied by certificates of the consular officer, or, should such functionary not exist, of the local authority, attesting that the goods, produce, or effects of the country are reimported for the above-stated reason.

358. Abaca, raw, is exempt from the production of the aforesaid certificate. The following articles may likewise be imported free of duty:

359. Paintings which are works of art, and have been exported with a custom-house certificate, provided that on their return the number of that document is stated or its duplicate produced for comparison with the original.

360. Books, when, on their exportation, the number of the copies, the title of the work, and the name of the editor have been stated in the export certificate.

361. Copper coins returned from foreign countries, if, on examination, it is seen that they have been coined legitimately.

362. Articles returned from foreign exhibitions.

363. Articles of the Philippine Islands returned from foreign countries, the entry of which was prohibited in the place of destination.

ARTICLES PROHIBITED.

364. Arms of war, projectiles, and their ammunitions, except with special consent of the military authorities.

365. Paintings, figures, or any other objects offensive to morality.

MISCELLANEOUS PROVISIONS.

366. Exemptions and reductions shall in no case be granted in favor of any industry, public establishment, corporation, society, order, or person, whatever their character, except as provided for herein.

367. Articles purchased with the funds of the Government of the United States for its use, and material of all kinds intended for works executed by the provisional administrations, and not by contract, shall be exempt from duty.

368. The metrical system of weights and measures

in use by the Spanish Government will be continued. The kilogram is equivalent to 2.2046 pounds.

369. The monetary unit of the Philippines is the silver peso of the mint.

370. The current money in circulation in the Philippines shall be received for duties, taxes, and other exactions, in the manner and upon the same basis of valuation theretofore prevailing as that in use prior to the military and naval occupation.

371. Official stamps shall be used as heretofore on all custom-house papers, as per official schedule:

	Pesos.
On the entrance of a vessel from a foreign port the stamp shall represent	1.00
On the clearance of a vessel to a foreign port	2.00
On bill of health	1.00
Transfer of vessel to American registry	10.00

372. The foregoing schedules and provisions, based upon the tariff and taxing laws heretofore in operation in the Philippine Islands, including such other taxes and exactions heretofore collected, as in the discretionary judgment of the commanding general shall be considered proper and necessary, shall be and remain in force until duly modified, suspended, or revoked.

O

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Supreme Court, U. S.
FILED
OCT 16 1906
JAMES H. MCKENNEY,
Clerk.

IN THE

Supreme Court of the United States.

October Term, 1904.

WARNER BARNES & CO., Limited, *Appellants*,
v.
THE UNITED STATES, *Appellee*.

No. 466.

Brief on Re-hearing of Herbert & Micou, representing Certain Claimants having Interests Similar to Those of Appellants.

H. A. HERBERT.
BENJ. MICOU.

October 9, 1906.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1904.

WARNER BARNES & CO., LIMITED, *Appellants,*
v.
THE UNITED STATES, *Appellee.*
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Brief on Re-hearing of Herbert & Micou, representing Certain Claimants having Interests Similar to Those of Appellants.

BRIEF.

In the above case the court has given leave to file petitions for a re-hearing, addressed solely to the two points, Whether Congress ratified the collection of the sums to be recovered in the suits, and Whether it had the power to do so?

In the brief filed by us on the hearing in this case we discussed quite fully the two points to which the present petitions for re-hearing are to be addressed.

The discussion of the point, that Congress did not ratify the collection of these sums, is found in that brief from pages 14 to 21.

Of the point, that Congress was without the power to ratify, from pages 21 to 29.

We ask the court to consider now as our connected pre-

sentation the discussion of those two points as found in that brief, which brief is on file.

Here we will confine ourselves to pointing out what we consider to be the fallacy of the Government's contention that Congress ratified the collection of these sums.

The brief of the Government is in a great measure a review of the petition and brief which it filed accompanying its application for a rehearing, numerous references being made to that petition and brief, the brief saying:

> "We respectfully ask the court to read in connection with this brief the passages in our earlier briefs to which we have referred herein. Those citations aid the logical development of our argument, and it does not seem necessary to lengthen this brief by reprinting and incorporating here the passages in question."
>
> Pp. 31–32, Attorney-General's brief.

It is in the brief filed on the application for a re-hearing that are really set forth the facts relied on to show ratification, and we believe we can more logically answer the Government's position by taking up and discussing the first brief rather than the one just filed, and we will therefore adopt that procedure.

There is a petition for a re-hearing by the Solicitor-General accompanied by a brief of the Attorney-General on the petition. In this brief the Attorney-General says that he concurs "in everything the Solicitor-General in the main petition for rehearing has said." He then proceeds with a statement of facts and an argument thereon in an attempt to establish ratification by Congress. His contention in its last analysis is:

That it was within the President's authority as Commander-in-Chief to levy these duties because the President willed to levy them under that authority. Congress ratified what the President did by virtue of his authority

as Commander-in-Chief, therefore it ratified the levying of these duties.

The premise is false, and it necessarily follows that the conclusion is. It is not surprising, and is illustrative of the Government's position, that while the Attorney-General starts out to confine his brief to ratification, the Solicitor-General, with everything in whose petition the Attorney-General concurs (pp. 1–2, Attorney-General's first brief), brings up at the following:

> "That the Government also rests on the war power as competent during the whole period, and has sought to establish that ratification was not necessary at all."
>
> P. 14, Solicitor-General's petition.

For while ostensibly contending for ratification the Attorney-General's brief really rests on the idea of the war power as competent during the whole period.

Eliminate that which this court has said in closing the *Dooley* case, viz., that —

> "the authority of the President as Commander-in-Chief to exact duties upon imports from the United States ceased with ratification of the treaty of peace, and her (Porto Rico's) right to the free entry of goods from the ports of the United States continued until Congress should constitutionally legislate upon the subject,"

and substitute therefor, that —

> "the authority of the President to levy duties, as Commander-in-Chief of the Army and Navy, is only limited by his will,"

and, as stated by the Solicitor-General, ratification was not necessary at all, provided it could be shown (which we do not admit) that the President willed that he had the authority to levy these duties. If this court, however, is correct, and the authority of the President as Commander-

in-Chief to levy duties ceased when peace was made and the territory we were occupying ceased to be foreign, then the Government's argument can not prevail, that duties levied after his authority had ceased were ratified by ratification, July 1, 1902, of the action of the President taken *by virtue of the authority vested in him* as Commander-in-Chief of the Army and Navy, in his order of July 12, 1898, together with subsequent amendments to that order.

The argument, that it is necessary to hold that Congress ratified the levying of the duties here in question in order that the action of the President can be squared with his lawful power (p. 18, Attorney-General's first brief) is fallacious. The legislation relied on to show ratification was passed July 1, 1902. The Porto Rican cases were decided May 27, 1901. In those cases it had been contended—and the same contention was made in these cases and abandoned only after the cases reached this court—that the authority of the President as Commander-in-Chief to levy these duties ceased on December 10, 1898, the date the treaty was concluded and signed at Paris, and not on April 11, 1899, the date the treaty was ratified. Contrary to this contention of the claimants, this court in the Porto Rican cases held that the duties levied between December 10, 1898, and April 11, 1899, were levied by virtue of the authority vested in the President as Commander-in-Chief. Congress could therefore very properly ratify the levying of duties during that period. By the language used in Section 2 of the Act of July 1, 1902, Congress certainly did not extend ratification any further than to acts done by virtue of the authority vested in the President as Commander-in-Chief; and presumably it did this with full knowledge of the decision of this court in the *Dooley* case, prescribing the extent of the President's authority upon this subject.

When it comes to squaring action with lawful power, which, under our form of government, is to yield—the action, or the lawful power?

The gist of the Government's argument is that the President decided that there continued, after the treaty of peace with Spain, a recognized state of war in the Philippines, and that he intended to levy these duties as a military necessity of that war, by virtue of his authority as Commander-in-Chief. The Government cites, to sustain this view, that Secretary Root in his cablegram of June 8, 1901, to the Chairman of the Philippine Commission, construed the decisions of this court in the Porto Rican cases to have drawn a distinction between Porto Rico and the Philippines, in that a state of war continued in the Philippines. The true meaning of this cablegram we will consider later in its connection with the other facts relied on to show the President's intentions; but in the light of the conduct of the military operations in the Philippines whereby recognition of belligerency to the insurgents was most pointedly denied, the quotation from Secretary Root in this cablegram would under no circumstances show that this court was wrong when it held, in the *Diamond Rings* case as well as in this case, that there had never been a recognized state of war in the Philippines after the ratification of the treaty of peace. Upon the idea that the court was wrong in this rests the whole argument of ratification; yet the court precluded, by its limitation of the points to which it will confine consideration on the re-hearing, re-opening the question of a recognized state of war in the Philippines after peace with Spain.

Discussion of Attorney-General's Statement of Fact.

The duties for which claim is made in the cases before this court were collected between April 11, 1899, and Oc-

tober 25, 1901, and under the order of July 12, 1898. There were no amendments to that order that in any way affected the schedule of duties established by the order.

The first brief of the Attorney-General recites (pp. 2 to 4) that there was a suspension of the order of July 12, 1898, until November 10, 1898, when a tariff which was substantially the same as originally accompanied the order was put into effect.

That in December, 1898, these tariff regulations were, by order of the military governor, amended by striking out two words.

That April 10, 1899, there was a paragraph added to the tariff regulations.

We ask the court to bear in mind that these changes were before the ratification of the treaty. In other words, during the war with Spain; and that they in no way affected the rate of duties as levied under the order of July 12, 1898. Therefore it is a subject of no concern in this case whether these changes were ratified by Congress or not, for the following statement from the opinion of the court is absolutely correct:

> "The duties were levied under an order of the President dated July 12, 1898."

All that Sec. 2 of the Act of July 1, 1902, could possibly have ratified would have been collections under the order of July 12, 1898, and any subsequent amendments thereto, during the period that said order and amendments could have force and effect by virtue of the authority vested in the President as Commander-in-Chief.

Mr. Justice Holmes in the opinion states:

> "Apart from the question of the duration of the President's order, it plainly was an order intended to deal with imports from foreign countries only, and Philippine ports not in the actual military control of the United States."

The opinion is criticised for overlooking amendments to the order of July 12, 1898, but as there were no amendments under which duties were levied the learned judge naturally speaks only of the order.

May 3, 1899, after the treaty of peace, the President issued an order prescribing certain collection districts for customs purposes in the Philippines. It is contended (pp. 5 and 6, Attorney-General's first brief) that this was an amendment to the order of July 12, 1898.

The Honorable Attorney-General quotes the following from the latter part of the opinion:

> "The approval of the action of the authorities is confined to those which were in accordance with the order, which, as we already have intimated, the collection of these duties was not,"

and insists that the approval is *ex industria* extended to include those (actions) which were taken in accordance with subsequent amendments (pp. 15 and 16 of his first brief).

The Honorable Attorney-General evidently overlooks the fact, never out of mind in the clear though terse opinion of the court, viz: that the duties sued for were levied under the President's order of July 12, 1898. This being true, and nothing claimed in this suit having been levied under any subsequent amendment to the order of July 12, it is immaterial whether there were any subsequent amendments, or if so, whether Congress approved the same.

The order of May 3, 1899, prescribing certain collection districts for customs purposes in the Philippines, did not change the tariff fixed by the order of July 12, 1898. Therefore, as stated above, it matters not here whether that order amended the order of July 12, 1898. It did not amend it in any particular that affects this case.

That suffices to answer the Government's argument

that subsequent amendments were ratified; but while on the subject, we beg to state that we are constrained to differ with the Honorable Attorney-General in his view that this order was an amendment of the order of July 12, 1898. He says (p. 5 of his first brief):

> "Now, this order of May 3, 1899, is wholly ineffective and meaningless unless construed as an amendment of the order of July 12."

From the necessities of the case, the right to administer the government of the Philippines continued in the military commander after the ratification of the treaty and until further action by Congress. This though the right to exact duties upon imports from the United States had ceased. The President had the right, after the treaty had been ratified, until Congress acted on the subject, to administer the government of the Philippines, which undoubtedly included the right to establish collection districts for customs purposes, though not to levy duties upon goods that came from the United States; therefore this order prescribing collection districts would not, as contended, be ineffective and meaningless unless construed as an amendment of the order of July 12, 1898.

The Honorable Attorney-General says (p. 19 of his first brief):

> "The statement of facts will have utterly failed in in its purpose if it does not show that by the order of May 3, 1899, the President intended to amend the order of July 12, 1898, by treating it in force after the war and by continuing it with a few amendments, that he intended thereby to impose duties on goods coming from the United States, and that the collection of duties accordingly was known to him and approved by him."

Why is such stress laid upon the order of May 3, 1899, being an amendment to the order of July 12, 1898? As

already seen, it was not under that order, but under the order of July 12, 1898, that the duties here sued for were collected, and ratification of the order of May 3, 1899, could have no effect on the right of claimants. It is perhaps unconsciously, but nevertheless for an indirect purpose, that it is insisted that this order is an amendment of the one under which these duties were levied. To sustain the ratification theory the exigency requires that this court be shaken from the bed-rock on which rest the Insular cases, viz: that the authority of the President as Commander-in-Chief to exact duties upon imports from the United States ceased with the ratification of the treaty of peace. Unless this court can be brought to the view that that authority continued after the treaty was ratified, then the Government must lose, for it is too plain for argument that nothing done under the order of July 12, 1898, is ratified by Congress except action taken *by virtue of the authority vested in the President as Commander-in-Chief.*

How does the Government attempt to shake this court from its position regarding the President's authority? By trying to instil into the order of July 12, 1898 (which was a measure taken with reference to the war with Spain alone, and plainly intended to deal with imports from foreign countries), new life after it had expired, by contending that after such time it was amended. This is the real interest the Government has in establishing that the order of May 3, 1899, was an amendment of the order of July 12, 1898. It really matters not an iota whether Congress has ratified the order of May 3, 1899; but it matters everything whether the authority of the President to levy duties on goods from the United States under the order of July 12, 1898, ceased April 11, 1899. The order of May 3, 1899, can not however by this indirection be put to the use of overturning the decision of this court

in the *Dooley* case and made to establish the fact that the President's authority to levy duties on goods coming from the United States did not cease with the ratification of the treaty.

Besides the order cited and just discussed, to try and establish amendment to the order of July 12, 1898, the Honorable Attorney-General's first brief cites other facts from which it is argued that President McKinley intended this order to be, not what Mr. Justice Holmes states it to have been, a measure taken with reference to the war with Spain alone, but precisely what this court has said it was not, viz: a power in blank for any military occasion which might turn up in the future.

We will briefly refer to these facts. Most of them do not require any discussion.

1. That an inquiry was made of the Secretary of War by an American firm relative to the duties imposed on whiskey entering the Islands, which upon reference through official channels received an indorsement from the collector, that the classification undoubtedly discriminated against American whiskies of a certain class, but does not check their importation (p. 6, Attorney-General's first brief).

2. That there was a petition from the Chamber of Commerce at San Francisco, for a reduction of duties, which complained of discrimination against American goods; which petition was forwarded to the President, was referred through the regular official channels to the Philippines, and returned with an endorsement that uniform duties were imposed on goods from Spain and the United States (pp. 6 and 7 of the first brief).

3. That there was a continuing correspondence and discussion concerning the tariff, between the Military Governor and the Secretary of War, the latter directing, in June, 1900, the Military Governor to appoint a board

to revise the customs tariff and regulations for the Islands. That this board's report was transmitted to the Philippine Commission, with directions that the new tariff as recommended should be submitted to the Secretary of War for action, and after approval by him, be promulgated.

That the report asked for was forwarded to the Secretary of War, and that it contained in Section 9 the statement that importations from the United States are dutiable under the provisions of the act (p. 7, Attorney-General's first brief).

4. That there followed a long correspondence between American merchants and the Secretary of War in regard to the tariff, and that the Secretary did not desire any promulgation of the tariff that had been determined upon before a decision of the Supreme Court in the Porto Rican cases (p. 8 of the first brief).

5. That those decisions were rendered May 27, 1901, and that a month after (June 28, 1901), there was sent a cable despatch by the Secretary of War to the Chairman of the Commission in the Philippines (pp. 8 and 9, first brief). It is stated (p. 8, of this first brief), that this telegram was sent as soon as the opinion was received and construed.

The telegram itself states (p. 9, Attorney-General's first brief):

> "The most obvious distinction between the status of Porto Rico and the Philippines after the cession, indicated in the opinions of the court, is in the fact that Porto Rico was at the time of cession in full peaceful possession, while a state of war continued in the Philippines."

From the decisions in the *Diamond Rings* case and in this case it is apparent that the Secretary of War misapprehended this honorable court in assuming it had indi-

cated the distinction referred to by him between the status of Porto Rico and the Philippines. His construction of the opinion of this court, however, could not under any circumstances be treated as a recognition of a continuing state of war in the Philippines after the war with Spain had terminated. Especially could it not be so considered in view of the care exercised by the administration in all its dealings with the insurrection to withhold from the insurgents any recognition of belligerency. The next sentence, however, of the Secretary of War's cablegram makes it plain that the President did not continue the imposition of duties because he construed the opinion of this court to have made a distinction between the status of Porto Rico and the Philippines, but for the very different reason, that the court had not as yet passed upon the status of the Philippines.

The President's reason for continuing the imposition of duties is thus stated:

> "As the question of the President's power to impose duties in the Philippine Islands under the existing conditions of military occupation has not been decided by the court, the President has determined to continue to impose duties as heretofore."

It is expressly stated that his power has not been decided by the courts. In the face of that statement, is it to be assumed that the President had decided to forestall the action of this court and to determine—what the Government's argument is in its last analysis—that his constitutional authority was only defined by his intentions? Not at all. The President, administering the affairs of the Government, and, as the Secretary of War states, hoping for further decisions shortly after the court met in October, did, pending these decisions decide upon a continuation of the *statu quo*. For this decision there was every reason; at that stage of affairs it was certainly the

wisest and best course open to him. By pursuing that course he would protect the Government, whose chief officer he was, and likewise those individual rights which it was not only Mr. McKinley's duty and privilege, but always his pleasure, to protect. Duties up to the time of the Porto Rican decisions had been collected on goods coming from the United States, both in Porto Rico and the Philippines. Suits had been brought for recovery in Porto Rico, and if not actually brought, would no doubt be brought for recovery in the Philippines. His powers to impose these duties in the Philippines, as he states, were yet undecided by the courts. Therefore, if he continued to levy those duties and the courts decided (as this court has finally done) in favor of recovery, the claimants would get back what they had paid, and their individual rights would not be lost but would be fully protected. If, on the other hand, he had in advance of action by the courts ordered the levying of these duties discontinued in the Philippines, and this court had sustained the right to collect those duties, then the duties to which the Government would have been entitled would, through the President's action, have been forever lost. The situation is one where, acting in an executive capacity, the Government was entitled to the benefit of any doubt, and the President could not, in the faithful discharge of his duty, have done less than he did. He, however, by his action, determined nothing more as to the status in the Philippines than the Secretary of War stated that he had determined, viz: that his power to impose these duties had not been decided by the courts. And the facts of this case do not support the argument, however adroitly it may be put, that President McKinley considered that by virtue of the authority vested in him as Commander-in-Chief he had a clear right to levy these duties.

6. The facts cited (p. 10, Attorney-General's first brief)

regarding the preparation of a tariff bill by the Philippine Commission and the putting of the same in force, need no consideration here, because the tariff did not go into effect until November 15, 1901, and all the duties here claimed for were levied prior to that time under the order of July 12, 1898.

7. The report of the Ways and Means Committee of the House of Representatives, adopted by the Senate, on the Philippine Tariff Bill, quoted from on page 11 of the Attorney-General's brief, would not, in view of the plain language of the act itself, be admissible to show the intention of Congress; but that report does not indicate an intention to ratify anything that might have been done by the President without authority as Commander-in-Chief. The report says:

> "It is intended to restore the status which existed prior to the late decision of the Supreme Court in the case of the *Diamond Rings*."

The language "restore the status" relates to the future, and suggests nothing retroactive in effect. It really precludes the idea that the bill was intended to be retroactive. If such effect was intended the Committee would not have stopped at merely referring to restoring a status.

Why Congress adopted the rates that had been established by the order of the Philippine Commission September, 1901, is explained in the following parts of the report not quoted in the Government's brief.

> "These different forms of tariff in force there have produced a surplus of revenue, after paying the expenses of the Government. * * * The necessity for the continuance of revenue which shall be both ample and certain is imperative. * * * The object of the bill is to meet a pressing emergency practically and efficiently. We present the tariff act of the Commission as the best that can be devised in the limited time left for us to act."

The bill as finally enacted clearly negatives the idea that it was to be retroactive. Congress states that the provisions of an act entitled

> "An Act to revise and amend the tariff laws of the Philippine Archipelago, enacted by the United States Philippine Commission on the 17th day of September, 1901, shall be and remain in full force and effect and there shall be levied, collected and paid upon all articles *coming into* the Philippine Archipelago from the United States, the rates of duty which are required by the said act to be levied, collected and paid upon like articles imported from foreign countries into said archipelago."

"Coming into the Philippine Archipelago" certainly relates to after the passage of the act and not to goods that had come in previously. The plain meaning of this provision is: That Congress determined to provide that for the future it would extend the same rate of duties to goods that came from the United States that were being properly levied in the Philippines on goods coming from foreign countries.

As stated by the Commission, it was the best rate that could be devised in the limited time left in which to act.

There is however a fact totally overlooked in the contention of the Government based upon this report of Congress and this clause of the bill, which is: The Act of the Philippine Commission, adopted by Congress and enacted by the Commission on the 17th day of September, 1901, did not by its terms go into effect until November 15, 1901. The duties included in these suits were none of them levied later than October 25, 1901. Therefore had Congress said in express terms that it ratified the levying of all duties under this Act of the 17th day of September, 1901, and its power to so ratify was unquestioned, it would not have affected this case, where the duties were levied under the order of July 12, 1898.

In the second brief of the Attorney-General the idea is abandoned that the act of March 8, 1902, the Philippine Tariff Act, ratified the levying of duties previous to the passage of the act. The brief says (the italics being our own):

> "The act of March 8, 1902, was the adoption by Congress itself, as its own tariff law for the Philippines, of the existing provisional tariff, without any change, and specifying that it applied to merchandise entering the Philippines from the United States. This statute altogether disposed for the future of the question of the validity of the taxation, and of course falls completely within the ruling of the insular cases respecting the constitutionality of the analogous law for Porto Rico—the Foraker Act. No reasonable mind could doubt that the fair and natural inference from this act is that Congress had followed the proceedings in the tariff field respecting the Philippines and approved what had been done, *although so far without specific ratification as to the past.*"
>
> Second brief of the Attorney-General, p. 5.

To refer now to the last brief of the Government.

Last Brief.

It is stated:

> "Then came the Spooner amendment in March, 1901, and whatever else may be pertinent to say about it, this much is certain—that it followed by substantial reproduction of language the precedent of the *Louisiana* case, Act of October 31, 1803, 2d Stat. 245; that there could not well be a broader amount of power giving the President all possible authority to cover every phase of the Philippine emergencies and necessities, and that the general intention of Congress at that time to approve comprehensively what the President had previousiy done, and to authorize him comprehensively to act thus in the future, appears too plain for any discussion."
>
> Pp. 4 and 5, second brief of Attorney-General.

Commencing on the middle of page 10 of our first brief, and extending to the middle of page 14, will be found a succinct discussion of the effect of the Spooner amendment upon duties levied in the Philippines; and to this the attention of the court is especially invited. Here it suffices to say that we differ with the Honorable Counsel for the Government, in the idea that that amendment followed by substantial reproduction of language the precedent of the *Louisiana* case, and we think the discussion just referred to in our first brief makes that plain. Furthermore, no action was taken by the President in the matter of levying duties under authority of the Spooner amendment. As shown on page 13 of our first brief, the President directed that until further orders the Government will continue under existing instructions and orders, and as also pointed out in our first brief, even the act of the Philippine Commission of September 17, 1901, which went into effect November 15, 1901, and under which none of the duties here claimed were levied, was not enacted under authority of this amendment.

In the second brief of the Government there are several references to and considerable discussion of the case of *Hamilton* v. *Dillin*, 21 Wall. 73. This court is fully familiar with that case, and it is only necessary to say that in the application made of it here counsel overlook the date of April 11, 1899, when the war with Spain ceased.

The license tax on cotton, recovery for which was sued for in that case, was levied during the Civil War, and is recognized throughout the case to have been levied as a war measure, and so far as authority was given the President by Congress to levy this license tax July 13, 1861, and so far as the regulations under which the levy was made, were recognized and confirmed July 2, 1864, both were acts of Congress passed during the war; one authorizing action by the President, which, as a war measure it was

perfectly proper to authorize, and the other recognizing and confirming the authorization.

Relative to the argument based upon this case of *Hamilton* v. *Dillin*, that there has been no proper protest in these cases: That argument is outside the two points to which the court has confined this re-hearing. It has nothing to do with ratification or the power to ratify but relates to the right to recover, regardless of and entirely independent of those two points, a subject not now open to discussion.

On pages 22 and 23 of the second brief of the Attorney-General it is said, referring to the claimants in these cases:

> "They shifted the burden placed on them to their customers, by adding the duties to the price for their merchandise; and now they are very willing to recover this amount again from the Government."

Considering the very high source from which this assertion comes, we are constrained to notice it and say that if it were correct we can see no effect whatever it could have upon the rights of the claimants to recover these duties. There is however nothing in the record to support such a statement.

The Government has submitted what it terms "a statement of claims filed" as showing the amount involved in this controversy. We are unable to comprehend the relation between amount involved and the principles of law governing a case; but, in regard to the claims we represent, we regret to have found, since filing our petitions, that what we claim in American gold was in reality paid in Mexican silver—which will reduce the claims over one-half. And counsel for other claimants tell us that they have made equally unfortunate discoveries.

H. A. HERBERT,
BENJ. MICOU.

October 9, 1905.